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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO AGRICULTURE AND FORESTRY - WOODLAND PRESERVATION AND
STEWARDSHIP ACT

Introduced By: Representatives Handy, Barros, Alzate, and Bennett

Date Introduced: March 07, 2019

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Declaration of findings and intent.

2 (a) The general assembly finds and declares that:

3 (1) Woodland currently covers more than half of the land area of the state;

4 (2) Woodland is a major and vital component of the ecosystem that supports life as we
5 know it in Rhode Island;

6 (3) Woodland is ecologically diverse and dynamic, it changes over time as species of
7 trees and woody vegetation mature and undergo succession;

8 (4) Woodland is a natural resource component of green infrastructure and supplies
9 important ecosystem services including, but not limited to, air quality improvement, shading and
10 cooling, storm water retention and filtration, and soil erosion mitigation;

11 (5) Woodland contributes substantially to scenic, property, recreational and economic
12 values in the state;

13 (6) Woodland will be affected by global warming and climate change and is an important
14 means of mitigating global warming including, but not limited to, the provision of habitat
15 diversity and cooling effects of tree cover; and

16 (7) Woodland requires:

17 (i) Stewardship as a dynamic system, needing management, which adapts to changing
18 conditions, to maintain its health and diversity; and

- 1 (ii) Preservation in areas where it has exceptional natural resource value.
- 2 (b) It is the intent of the general assembly to establish a comprehensive program:
- 3 (1) Of guidance that is based on collective understanding of issues pertaining to
- 4 woodland stewardship and woodland preservation as significant natural resource areas and is
- 5 adopted by rules and regulations by the director of the department of environmental management;
- 6 and
- 7 (2) Of implementation, of woodland stewardship and preservation as significant natural
- 8 areas, that is responsive to local conditions and is administered by towns and cities through local
- 9 comprehensive planning and zoning.

10 SECTION 2. Title 2 of the General Laws entitled "AGRICULTURE AND FORESTRY"

11 is hereby amended by adding thereto the following chapter:

12 CHAPTER 10.1

13 WOODLAND PRESERVATION STEWARDSHIP ACT

14 **2-10.1-1. Short title.**

15 This chapter shall be known and may be cited as the "Woodland Preservation and

16 Stewardship Act".

17 **2-10.1-2. Purposes and declarations of public policy.**

18 (a) Purposes. This chapter shall have the following purposes:

19 (1) To secure, through broad-based stewardship, the benefits of woodland, urban forestry,

20 and tree cover comprehensively within the state for the benefit of people, with a goal that the

21 majority of the land area of the state shall continue to have tree cover through woodland and

22 urban forestry;

23 (2) To provide for resource planning for the control and regulation and preservation of

24 woodlands as significant natural areas in the state necessary to the preservation, regeneration and

25 restoration of the natural environment of the state and to the protection from impairment of the

26 natural resource functions of woodland as significant natural areas;

27 (3) To build public understanding of the ecological importance of woodland, urban

28 forestry, and tree cover and of the ecosystem services supplied by woodland, urban forestry and

29 tree cover, and to maintain and improve public access to woodland areas in the state, including as

30 appropriate for purposes of passive recreation, wildlife watching, hunting and fishing; and

31 (4) To use, enhance, complement, and integrate existing programs, efforts, and

32 commitments for woodland stewardship and preservation of state and local government and

33 quasi-public corporations.

34 (b) Public policy on woodlands. It is the public policy of the state to preserve the integrity

1 and viability of the woodlands of this state. The health, welfare, and general well-being of the
2 populace and the protection of life and property require that the state provide for:

3 (1) The stewardship of woodland throughout the state; and

4 (2) The exercise of the police power through local comprehensive planning and zoning to
5 regulate activities in woodland significant natural areas, consistent with this chapter and its
6 purposes.

7 **2-10.1-3. Definitions.**

8 (a) As used in this chapter these terms shall have the following meanings:

9 (1) "Council" means the community advisory council;

10 (2) "Department" means the department of environmental management;

11 (3) "Director" means the director of the department of environmental management;

12 (4) "Division" means the division of forest environment;

13 (5) "Forest or forest land" means forest land as defined in § 44-27-2.

14 (6) "Tree" means a woody perennial plant with:

15 (i) Erect stem or trunk, which at maturity, is at least three (3") inches in diameter at a
16 height of four and one-half feet (4.5') and is at least thirteen (13') feet in height;

17 (ii) With branches; and

18 (iii) With a definitely formed crown of foliage;

19 (7) "Woodland" means a parcel of land of forty thousand (40,000) square feet or greater
20 that is substantially covered by trees naturally occurring in Rhode Island and is characterized by
21 its tree stock; and

22 (8) "Woodland significant natural area" means woodland identified, for its outstanding
23 ecosystem values that contribute substantially to ecosystem diversity or to the provision of
24 ecosystem services, which contributions could be impaired by development.

25 **2-10.1-4. Resource planning, community advisory council, ecosystem-based**
26 **stewardship, and woodland significant natural area preservation.**

27 (a) It shall be a function of the department to provide for woodland resource planning,
28 ecosystem-based stewardship and woodland significant natural area preservation as necessary to
29 accomplish the purposes of this chapter and to control and regulate woodland as a natural
30 resource of the state.

31 (b) Not later than September 1, 2019, the director shall appoint a community advisory
32 council of not less than fifteen (15) nor more than twenty-three (23) members, not less than
33 twenty-five percent (25%) of whom shall be representatives of towns and cities. A representative
34 of the division shall be executive director of the council, and a representative of the division of

1 statewide planning shall be its secretary. The office of energy resources and the coastal resources
2 management council shall be ex officio members of the community advisory group. The
3 membership of the community advisory council shall be drawn from conservation districts,
4 nonprofit organizations, land trusts, business entities (including developers and builders), clubs
5 and associations, and persons with scientific, professional, and personal knowledge of woodland
6 science and issues. The director shall appoint a person who is a public member of the council to
7 be its chairperson. The council may elect its vice chairperson. The council shall sunset December
8 31, 2020, unless upon its recommendation, its life is extended for a definite period of time by the
9 director.

10 (c) The director shall:

11 (1) Recommend to the governor, the executive climate change coordinating council, and
12 the state planning council, not later than April 24, 2020, a program of actions including, but not
13 limited to, guidance for property-owners of woodlands for maintaining woodland ecosystem
14 health and diversity, to provide for woodland stewardship and urban forestry comprehensively in
15 Rhode Island; and

16 (2) Promulgate by rules and regulations not later than July 1, 2020, guidance, which shall
17 be used by towns and cities, to designate specific areas in the community as woodland significant
18 natural areas.

19 (d) Woodland stewardship guidance. The council shall recommend to the director by
20 March 15, 2020, a program to provide for woodland stewardship and urban forestry throughout
21 the state so that all people of the state can benefit from the ecosystem services of woodland and
22 trees. The program shall specifically propose, but not be limited to, guidance for:

23 (1) Woodland stewardship for parcels of woodland that do not have a forestry
24 management plan as required by chapter 27 of title 44 and for adjoining parcels of woodland that
25 collectively provide significant ecosystem services or ecosystem diversity or constitute
26 collectively an unfragmented area of woodlands that is two hundred fifty (250) acres or greater;
27 and

28 (2) Urban forestry initiatives.

29 (e) Allowable development limitation. Within the woodland stewardship program, and
30 consistent with local comprehensive plans, as defined in chapter 22.2 of title 45, and zoning, as
31 defined in chapter 24 of title 44, woodland areas may include residential development provided
32 that the area cleared is not more than twenty-five percent (25%) of the parcel or one acre, which
33 ever amount is the lesser, and may include commercial uses provided that the area cleared is not
34 more than twenty percent (20%) of the parcel or three-quarters (3/4) of an acre, which ever

1 amount is the lesser. These limitations shall not apply:

2 (1) To parcels subject to the provisions of chapter 27 of title 44; or

3 (2) Parcels being used for commercial forestry purposes or tree farming. The provisions
4 of this subsection shall not supersede restrictions, limitations, or rights established by:

5 (i) The designation of a woodland significant natural area;

6 (ii) The fresh water wetlands act, §§ 2-1-18 through 2-1-24;

7 (iii) The right to farm act, chapter 23 of title 2;

8 (iv) The coastal resources management council; or

9 (v) Any land preservation agreement.

10 (f)(1) Preservation of woodland significant natural areas, restricted use and non-
11 impairment of woodland viability and functionality. Guidance shall be developed in the manner
12 set forth in this subsection for use by cities and towns in designating woodlands that meet the
13 criteria set forth in the guidance as woodland significant natural areas and permitting, prohibiting,
14 limiting, and restricting development in such designated woodlands. By February 1, 2020, the
15 council shall recommend guidance which shall take into consideration, but not be limited to, the
16 following factors:

17 (i) The contribution of the woodland to ecosystem diversity;

18 (ii) The level and necessity of ecosystem services provided by the woodland;

19 (iii) The level of contribution of the woodland to scenic, cultural, and natural resource
20 values; and

21 (iv) The contribution of the woodland to maintaining unfragmented forest in Rhode
22 Island.

23 The guidance shall include both criteria for designation of woodland significant natural
24 areas and recommendations for stewardship measures appropriate to the maintenance of the
25 character, quality, and viability of the woodland so designated.

26 (2) The director, in consultation with the community advisory council, the coastal
27 resources management council, the division of state planning, and the state conservation
28 committee, established pursuant to § 2-4-3, shall, by July 1, 2020, promulgate by rules and
29 regulations guidance for the designation of woodland significant natural areas by cities and towns
30 that addresses the factors set forth in this subsection and achieves the purposes of this chapter.

31 (g) Designations of woodland significant natural areas by towns and cities. For the
32 purposes of controlling and regulating the use of natural resources in the community, consistent
33 with the purposes of this chapter, and securing the preservation, regeneration and restoration of
34 woodland natural resources in the community, towns and cities shall through their local

1 comprehensive plans and zoning ordinances implement the guidance promulgated pursuant to
2 subsection (f) of this section in a manner that promotes and sustains the health and welfare of the
3 community, conserves its character and economy.

4 **2-10.1-5. Woodland and agriculture.**

5 (a) The provisions of this chapter shall be effectuated in a manner that:

6 (1) Recognizes and conserves the integral relationship of woodland and agriculture in the
7 state; and

8 (2) Except as necessary under §§ 2-1-18 through 2-1-28 inclusive and § 46-23-6 (2)(E),
9 does not impair the ability of farmers to engage in agricultural operations, as defined in § 2-23-
10 4(a). Silvopasture shall be recognized as an agricultural method that can maintain woodland
11 ecosystem services and support agricultural production.

12 **2-10.1-6. Woodland in the coastal zone.**

13 The coastal resources management council shall adopt requirements, which are
14 consistent, so far as feasible, with the guidance promulgated by the director pursuant to § 2-10.1-
15 5(f)(2) and are appropriate for woodland in its area of jurisdiction, for the preservation,
16 restoration, and regeneration of such woodlands as woodland significant natural areas.

17 **2-10.1-7. Woodland stewardship and preservation in state plans.**

18 The state planning council shall adopt by July 1, 2021, such amendments to elements of
19 the state guide plan as are necessary to accomplish the purposes of this chapter. The executive
20 climate change coordinating council shall incorporate the achievement of the purposes of this
21 chapter in its updated plans for the reduction of greenhouse gas emissions necessary to achieving
22 the targets set forth in § 42-6.2-2(a)(2)(i). The Rhode Island infrastructure bank and Rhode Island
23 emergency management agency shall include measures to achieve the purposes of this chapter in
24 their plans to build and maintain resilience, adapt to climate change, and mitigate hazards.

25 **2-10.1-8. Abrogation.**

26 Nothing in this chapter shall be deemed to abrogate or impair the powers of the
27 department to administer the freshwater wetlands act, §§ 2-1-18 through 2-1-28 inclusive or the
28 powers of the coastal resources management council pursuant to chapter 23 of title 46.

29 **2-10.1-9. Enforcement.**

30 The provisions of this act may be enforced by means of an action in the superior court
31 seeking either injunctive relief or a writ of mandamus or both. Venue for such actions shall be
32 proper in the superior court of Providence county. All persons shall have standing to commence
33 any enforcement actions. Reasonable attorneys' fees shall be recoverable by all substantially
34 prevailing plaintiffs who seek relief under this section.

1 **2-10.1-10. Liberal construction.**

2 This chapter, being necessary for the welfare of the state and its inhabitants, shall be
3 liberally construed in order to effectuate its purposes.

4 **2-10.1-11. Severability.**

5 If any clause, sentence, paragraph, section, or part of this chapter shall be adjudged by
6 any court of competent jurisdiction to be invalid, that judgment shall not affect, impair, or
7 invalidate the remainder of the chapter but shall be confined in its operation to the clause,
8 sentence, paragraph, or part directly involved in the controversy in which that judgment shall
9 have been rendered.

10 SECTION 3. Sections 42-17.1-2 and 42-17.1-4 of the General Laws in Chapter 42-17.1
11 entitled "Department of Environmental Management" are hereby amended to read as follows:

12 **42-17.1-2. Powers and duties.**

13 The director of environmental management shall have the following powers and duties:

14 (1) To supervise and control the protection, development, planning, and utilization of the
15 natural resources of the state, such resources, including, but not limited to: water, plants, trees,
16 soil, clay, sand, gravel, rocks and other minerals, air, mammals, birds, reptiles, amphibians, fish,
17 shellfish, and other forms of aquatic, insect, and animal life;

18 (2) To exercise all functions, powers, and duties heretofore vested in the department of
19 agriculture and conservation, and in each of the divisions of the department, such as the
20 promotion of agriculture and animal husbandry in their several branches, including the inspection
21 and suppression of contagious diseases among animals; the regulation of the marketing of farm
22 products; the inspection of orchards and nurseries; the protection of trees and shrubs from
23 injurious insects and diseases; protection from forest fires; the inspection of apiaries and the
24 suppression of contagious diseases among bees; the prevention of the sale of adulterated or
25 misbranded agricultural seeds; promotion and encouragement of the work of farm bureaus, in
26 cooperation with the University of Rhode Island, farmers' institutes, and the various organizations
27 established for the purpose of developing an interest in agriculture; together with such other
28 agencies and activities as the governor and the general assembly may, from time to time, place
29 under the control of the department; and as heretofore vested by such of the following chapters
30 and sections of the general laws as are presently applicable to the department of environmental
31 management and that were previously applicable to the department of natural resources and the
32 department of agriculture and conservation or to any of its divisions: chapters 1 through 22,
33 inclusive, as amended, in title 2 entitled "Agriculture and Forestry"; chapters 1 through 17,
34 inclusive, as amended, in title 4 entitled "Animals and Animal Husbandry"; chapters 1 through

1 19, inclusive, as amended, in title 20 entitled "Fish and Wildlife"; chapters 1 through 32,
2 inclusive, as amended, in title 21 entitled "Food and Drugs"; chapter 7 of title 23, as amended,
3 entitled "Mosquito Abatement"; and by any other general or public law relating to the department
4 of agriculture and conservation or to any of its divisions or bureaus;

5 (3) To exercise all the functions, powers, and duties heretofore vested in the division of
6 parks and recreation of the department of public works by chapters 1, 2, and 5 in title 32 entitled
7 "Parks and Recreational Areas"; by chapter 22.5 of title 23, as amended, entitled "Drowning
8 Prevention and Lifesaving"; and by any other general or public law relating to the division of
9 parks and recreation;

10 (4) To exercise all the functions, powers, and duties heretofore vested in the division of
11 harbors and rivers of the department of public works, or in the department itself by such as were
12 previously applicable to the division or the department, of chapters 1 through 22 and sections
13 thereof, as amended, in title 46 entitled "Waters and Navigation"; and by any other general or
14 public law relating to the division of harbors and rivers;

15 (5) To exercise all the functions, powers, and duties heretofore vested in the department
16 of health by chapters 25, 18.9, and 19.5 of title 23, as amended, entitled "Health and Safety"; and
17 by chapters 12 and 16 of title 46, as amended, entitled "Waters and Navigation"; by chapters 3, 4,
18 5, 6, 7, 9, 11, 13, 18, and 19 of title 4, as amended, entitled "Animals and Animal Husbandry";
19 and those functions, powers, and duties specifically vested in the director of environmental
20 management by the provisions of § 21-2-22, as amended, entitled "Inspection of Animals and
21 Milk"; together with other powers and duties of the director of the department of health as are
22 incidental to, or necessary for, the performance of the functions transferred by this section;

23 (6) To cooperate with the Rhode Island commerce corporation in its planning and
24 promotional functions, particularly in regard to those resources relating to agriculture, fisheries,
25 and recreation;

26 (7) To cooperate with, advise, and guide conservation commissions of cities and towns
27 created under chapter 35 of title 45 entitled "Conservation Commissions", as enacted by chapter
28 203 of the Public Laws, 1960;

29 (8) To assign or reassign, with the approval of the governor, any functions, duties, or
30 powers established by this chapter to any agency within the department, except as hereinafter
31 limited;

32 (9) To cooperate with the water resources board and to provide to the board facilities,
33 administrative support, staff services, and other services as the board shall reasonably require for
34 its operation and, in cooperation with the board and the statewide planning program, to formulate

1 and maintain a long-range guide plan and implementing program for development of major
2 water-sources transmission systems needed to furnish water to regional- and local-distribution
3 systems;

4 (10) To cooperate with the solid waste management corporation and to provide to the
5 corporation such facilities, administrative support, staff services, and other services within the
6 department as the corporation shall reasonably require for its operation;

7 (11) To provide for the maintenance of waterways and boating facilities, consistent with
8 chapter 6.1 of title 46, by: (i) Establishing minimum standards for upland beneficial use and
9 disposal of dredged material; (ii) Promulgating and enforcing rules for water quality, ground
10 water protection, and fish and wildlife protection pursuant to § 42-17.1-24; (iii) Planning for the
11 upland beneficial use and/or disposal of dredged material in areas not under the jurisdiction of the
12 council pursuant to § 46-23-6(2); and (iv) Cooperating with the coastal resources management
13 council in the development and implementation of comprehensive programs for dredging as
14 provided for in §§ 46-23-6(1)(ii)(H) and 46-23-18.3; and (v) Monitoring dredge material
15 management and disposal sites in accordance with the protocols established pursuant to § 46-6.1-
16 5(a)(3) and the comprehensive program provided for in § 46-23-6(1)(ii)(H); no powers or duties
17 granted herein shall be construed to abrogate the powers or duties granted to the coastal resources
18 management council under chapter 23 of title 46, as amended;

19 (12) To establish minimum standards, subject to the approval of the environmental
20 standards board, relating to the location, design, construction, and maintenance of all sewage-
21 disposal systems;

22 (13) To enforce, by such means as provided by law, the standards for the quality of air,
23 and water, and the design, construction, and operation of all sewage-disposal systems; any order
24 or notice issued by the director relating to the location, design, construction, or maintenance of a
25 sewage-disposal system shall be eligible for recordation under chapter 13 of title 34. The director
26 shall forward the order or notice to the city or town wherein the subject property is located and
27 the order or notice shall be recorded in the general index by the appropriate municipal official in
28 the land evidence records in the city or town wherein the subject property is located. Any
29 subsequent transferee of that property shall be responsible for complying with the requirements of
30 the order or notice. Upon satisfactory completion of the requirements of the order or notice, the
31 director shall provide written notice of the same, which notice shall be similarly eligible for
32 recordation. The original written notice shall be forwarded to the city or town wherein the subject
33 property is located and the notice of satisfactory completion shall be recorded in the general index
34 by the appropriate municipal official in the land evidence records in the city or town wherein the

1 subject property is located. A copy of the written notice shall be forwarded to the owner of the
2 subject property within five (5) days of a request for it, and, in any event, shall be forwarded to
3 the owner of the subject property within thirty (30) days after correction;

4 (14) To establish minimum standards for the establishment and maintenance of salutary
5 environmental conditions, including standards and methods for the assessment and the
6 consideration of the cumulative effects on the environment of regulatory actions and decisions,
7 which standards for consideration of cumulative effects shall provide for: (i) Evaluation of
8 potential cumulative effects that could adversely affect public health and/or impair ecological
9 functioning; (ii) Analysis of other matters relative to cumulative effects as the department may
10 deem appropriate in fulfilling its duties, functions, and powers; which standards and methods
11 shall only be applicable to ISDS systems in the town of Jamestown in areas that are dependent for
12 water supply on private and public wells, unless broader use is approved by the general assembly.
13 The department shall report to the general assembly not later than March 15, 2008, with regard to
14 the development and application of the standards and methods in Jamestown;

15 (15) To establish and enforce minimum standards for permissible types of septage,
16 industrial-waste disposal sites, and waste-oil disposal sites;

17 (16) To establish minimum standards, subject to the approval of the environmental
18 standards board, for permissible types of refuse disposal facilities; the design, construction,
19 operation, and maintenance of disposal facilities; and the location of various types of facilities;

20 (17) To exercise all functions, powers, and duties necessary for the administration of
21 chapter 19.1 of title 23 entitled "Rhode Island Hazardous Waste Management Act";

22 (18) To designate, in writing, any person in any department of the state government or
23 any official of a district, county, city, town, or other governmental unit, with that official's
24 consent, to enforce any rule, regulation, or order promulgated and adopted by the director under
25 any provision of law; provided, however, that enforcement of powers of the coastal resources
26 management council shall be assigned only to employees of the department of environmental
27 management, except by mutual agreement or as otherwise provided in chapter 23 of title 46;

28 (19) To issue and enforce the rules, regulations, and orders as may be necessary to carry
29 out the duties assigned to the director and the department by any provision of law; and to conduct
30 investigations and hearings and to issue, suspend, and revoke licenses as may be necessary to
31 enforce those rules, regulations, and orders. Any license suspended under the rules, regulations,
32 and/or orders shall be terminated and revoked if the conditions that led to the suspension are not
33 corrected to the satisfaction of the director within two (2) years; provided that written notice is
34 given by certified mail, return receipt requested, no less than sixty (60) days prior to the date of

1 termination.

2 Notwithstanding the provisions of § 42-35-9 to the contrary, no informal disposition of a
3 contested licensing matter shall occur where resolution substantially deviates from the original
4 application unless all interested parties shall be notified of the proposed resolution and provided
5 with opportunity to comment upon the resolution pursuant to applicable law and any rules and
6 regulations established by the director;

7 (20) To enter, examine, or survey, at any reasonable time, places as the director deems
8 necessary to carry out his or her responsibilities under any provision of law subject to the
9 following provisions:

10 (i) For criminal investigations, the director shall, pursuant to chapter 5 of title 12, seek a
11 search warrant from an official of a court authorized to issue warrants, unless a search without a
12 warrant is otherwise allowed or provided by law;

13 (ii)(A) All administrative inspections shall be conducted pursuant to administrative
14 guidelines promulgated by the department in accordance with chapter 35 of title 42;

15 (B) A warrant shall not be required for administrative inspections if conducted under the
16 following circumstances, in accordance with the applicable constitutional standards:

17 (I) For closely regulated industries;

18 (II) In situations involving open fields or conditions that are in plain view;

19 (III) In emergency situations;

20 (IV) In situations presenting an imminent threat to the environment or public health,
21 safety, or welfare;

22 (V) If the owner, operator, or agent in charge of the facility, property, site, or location
23 consents; or

24 (VI) In other situations in which a warrant is not constitutionally required.

25 (C) Whenever it shall be constitutionally or otherwise required by law, or whenever the
26 director in his or her discretion deems it advisable, an administrative search warrant, or its
27 functional equivalent, may be obtained by the director from a neutral magistrate for the purpose
28 of conducting an administrative inspection. The warrant shall be issued in accordance with the
29 applicable constitutional standards for the issuance of administrative search warrants. The
30 administrative standard of probable cause, not the criminal standard of probable cause, shall
31 apply to applications for administrative search warrants;

32 (I) The need for, or reliance upon, an administrative warrant shall not be construed as
33 requiring the department to forfeit the element of surprise in its inspection efforts;

34 (II) An administrative warrant issued pursuant to this subsection must be executed and

1 returned within ten (10) days of its issuance date unless, upon a showing of need for additional
2 time, the court orders otherwise;

3 (III) An administrative warrant may authorize the review and copying of documents that
4 are relevant to the purpose of the inspection. If documents must be seized for the purpose of
5 copying, and the warrant authorizes the seizure, the person executing the warrant shall prepare an
6 inventory of the documents taken. The time, place, and manner regarding the making of the
7 inventory shall be set forth in the terms of the warrant itself, as dictated by the court. A copy of
8 the inventory shall be delivered to the person from whose possession or facility the documents
9 were taken. The seized documents shall be copied as soon as feasible under circumstances
10 preserving their authenticity, then returned to the person from whose possession or facility the
11 documents were taken;

12 (IV) An administrative warrant may authorize the taking of samples of air, water, or soil
13 or of materials generated, stored, or treated at the facility, property, site, or location. Upon
14 request, the department shall make split samples available to the person whose facility, property,
15 site, or location is being inspected;

16 (V) Service of an administrative warrant may be required only to the extent provided for
17 in the terms of the warrant itself, by the issuing court.

18 (D) Penalties. Any willful and unjustified refusal of right of entry and inspection to
19 department personnel pursuant to an administrative warrant shall constitute a contempt of court
20 and shall subject the refusing party to sanctions, which in the court's discretion may result in up to
21 six (6) months imprisonment and/or a monetary fine of up to ten thousand dollars (\$10,000) per
22 refusal.

23 (21) To give notice of an alleged violation of law to the person responsible therefor
24 whenever the director determines that there are reasonable grounds to believe that there is a
25 violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted
26 pursuant to authority granted to him or her, unless other notice and hearing procedure is
27 specifically provided by that law. Nothing in this chapter shall limit the authority of the attorney
28 general to prosecute offenders as required by law;

29 (i) The notice shall provide for a time within which the alleged violation shall be
30 remedied, and shall inform the person to whom it is directed that a written request for a hearing
31 on the alleged violation may be filed with the director within ten (10) days after service of the
32 notice. The notice will be deemed properly served upon a person if a copy thereof is served him
33 or her personally; or sent by registered or certified mail to his or her last known address; or if he
34 or she is served with notice by any other method of service now or hereafter authorized in a civil

1 action under the laws of this state. If no written request for a hearing is made to the director
2 within ten (10) days of the service of notice, the notice shall automatically become a compliance
3 order;

4 (ii)(A) Whenever the director determines that there exists a violation of any law, rule, or
5 regulation within his or her jurisdiction that requires immediate action to protect the environment,
6 he or she may, without prior notice of violation or hearing, issue an immediate-compliance order
7 stating the existence of the violation and the action he or she deems necessary. The compliance
8 order shall become effective immediately upon service or within such time as is specified by the
9 director in such order. No request for a hearing on an immediate-compliance order may be made;

10 (B) Any immediate-compliance order issued under this section without notice and prior
11 hearing shall be effective for no longer than forty-five (45) days; provided, however, that for
12 good cause shown, the order may be extended one additional period not exceeding forty-five (45)
13 days.

14 (iii) The director may, at his or her discretion and for the purposes of timely and effective
15 resolution and return to compliance, cite a person for alleged noncompliance through the issuance
16 of an expedited citation in accordance with § 42-17.6-3(c);

17 (iv) If a person upon whom a notice of violation has been served under the provisions of
18 this section or if a person aggrieved by any such notice of violation requests a hearing before the
19 director within ten (10) days of the service of notice of violation, the director shall set a time and
20 place for the hearing, and shall give the person requesting that hearing at least five (5) days
21 written notice thereof. After the hearing, the director may make findings of fact and shall sustain,
22 modify, or withdraw the notice of violation. If the director sustains or modifies the notice, that
23 decision shall be deemed a compliance order and shall be served upon the person responsible in
24 any manner provided for the service of the notice in this section;

25 (v) The compliance order shall state a time within which the violation shall be remedied,
26 and the original time specified in the notice of violation shall be extended to the time set in the
27 order;

28 (vi) Whenever a compliance order has become effective, whether automatically where no
29 hearing has been requested, where an immediate compliance order has been issued, or upon
30 decision following a hearing, the director may institute injunction proceedings in the superior
31 court of the state for enforcement of the compliance order and for appropriate temporary relief,
32 and in that proceeding, the correctness of a compliance order shall be presumed and the person
33 attacking the order shall bear the burden of proving error in the compliance order, except that the
34 director shall bear the burden of proving in the proceeding the correctness of an immediate

1 compliance order. The remedy provided for in this section shall be cumulative and not exclusive
2 and shall be in addition to remedies relating to the removal or abatement of nuisances or any
3 other remedies provided by law;

4 (vii) Any party aggrieved by a final judgment of the superior court may, within thirty (30)
5 days from the date of entry of such judgment, petition the supreme court for a writ of certiorari to
6 review any questions of law. The petition shall set forth the errors claimed. Upon the filing of the
7 petition with the clerk of the supreme court, the supreme court may, if it sees fit, issue its writ of
8 certiorari.

9 (22) To impose administrative penalties in accordance with the provisions of chapter 17.6
10 of this title and to direct that such penalties be paid into the account established by subdivision
11 (26);

12 (23) The following definitions shall apply in the interpretation of the provisions of this
13 chapter:

14 (i) Director: The term "director" shall mean the director of environmental management of
15 the state of Rhode Island or his or her duly authorized agent;

16 (ii) Person: The term "person" shall include any individual, group of individuals, firm,
17 corporation, association, partnership, or private or public entity, including a district, county, city,
18 town, or other governmental unit or agent thereof, and in the case of a corporation, any individual
19 having active and general supervision of the properties of the corporation;

20 (iii) Service: (A) Service upon a corporation under this section shall be deemed to include
21 service upon both the corporation and upon the person having active and general supervision of
22 the properties of the corporation;

23 (B) For purposes of calculating the time within which a claim for a hearing is made
24 pursuant to subdivision (21)(i), service shall be deemed to be the date of receipt of such notice or
25 three (3) days from the date of mailing of the notice, whichever shall first occur.

26 (24)(i) To conduct surveys of the present private and public camping and other
27 recreational areas available and to determine the need for and location of other camping and
28 recreational areas as may be deemed necessary and in the public interest of the state of Rhode
29 Island and to report back its findings on an annual basis to the general assembly on or before
30 March 1 of every year;

31 (ii) Additionally, the director of the department of environmental management shall take
32 additional steps, including, but not limited to, matters related to funding as may be necessary to
33 establish such other additional recreational facilities and areas as are deemed to be in the public
34 interest.

1 (25)(i) To apply for and accept grants and bequests of funds, with the approval of the
2 director of administration, from other states, interstate agencies, and independent authorities, and
3 private firms, individuals, and foundations, for the purpose of carrying out his or her lawful
4 responsibilities. The funds shall be deposited with the general treasurer in a restricted receipt
5 account created in the natural resources program for funds made available for that program's
6 purposes or in a restricted receipt account created in the environmental protection program for
7 funds made available for that program's purposes. All expenditures from the accounts shall be
8 subject to appropriation by the general assembly, and shall be expended in accordance with the
9 provisions of the grant or bequest. In the event that a donation or bequest is unspecified, or in the
10 event that the trust account balance shows a surplus after the project as provided for in the grant
11 or bequest has been completed, the director may utilize the appropriated unspecified or
12 appropriated surplus funds for enhanced management of the department's forest and outdoor
13 public recreation areas, or other projects or programs that promote the accessibility of recreational
14 opportunities for Rhode Island residents and visitors;

15 (ii) The director shall submit to the house fiscal advisor and the senate fiscal advisor, by
16 October 1 of each year, a detailed report on the amount of funds received and the uses made of
17 such funds.

18 (26) To establish fee schedules by regulation, with the approval of the governor, for the
19 processing of applications and the performing of related activities in connection with the
20 department's responsibilities pursuant to subsection (12); chapter 19.1 of title 23, as it relates to
21 inspections performed by the department to determine compliance with chapter 19.1 and rules
22 and regulations promulgated in accordance therewith; chapter 18.9 of title 23, as it relates to
23 inspections performed by the department to determine compliance with chapter 18.9 and the rules
24 and regulations promulgated in accordance therewith; chapters 19.5 and 23 of title 23; chapter 12
25 of title 46, insofar as it relates to water-quality certifications and related reviews performed
26 pursuant to provisions of the federal Clean Water Act, 33 U.S.C. § 1251 et seq.; the regulation
27 and administration of underground storage tanks and all other programs administered under
28 chapter 12 of title 46 and § 2-1-18 et seq., and chapter 13.1 of title 46 and chapter 13.2 of title 46,
29 insofar as they relate to any reviews and related activities performed under the provisions of the
30 Groundwater Protection Act; chapter 24.9 of title 23 as it relates to the regulation and
31 administration of mercury-added products; and chapter 17.7 of this title, insofar as it relates to
32 administrative appeals of all enforcement, permitting and licensing matters to the administrative
33 adjudication division for environmental matters. Two (2) fee ranges shall be required: for
34 "Appeal of enforcement actions", a range of fifty dollars (\$50) to one hundred dollars (\$100), and

1 for "Appeal of application decisions", a range of five hundred dollars (\$500) to ten thousand
2 dollars (\$10,000). The monies from the administrative adjudication fees will be deposited as
3 general revenues and the amounts appropriated shall be used for the costs associated with
4 operating the administrative adjudication division.

5 There is hereby established an account within the general fund to be called the water and
6 air protection program. The account shall consist of sums appropriated for water and air pollution
7 control and waste-monitoring programs and the state controller is hereby authorized and directed
8 to draw his or her orders upon the general treasurer for the payment of the sums, or portions
9 thereof, as may be required, from time to time, upon receipt by him or her of properly
10 authenticated vouchers. All amounts collected under the authority of this subdivision for the
11 sewage-disposal-system program and freshwaters wetlands program will be deposited as general
12 revenues and the amounts appropriated shall be used for the purposes of administering and
13 operating the programs. The director shall submit to the house fiscal advisor and the senate fiscal
14 advisor by January 15 of each year a detailed report on the amount of funds obtained from fines
15 and fees and the uses made of the funds.

16 (27) To establish and maintain a list or inventory of areas within the state worthy of
17 special designation as "scenic" to include, but not be limited to, certain state roads or highways,
18 scenic vistas, and scenic areas, and to make the list available to the public;

19 (28) To establish and maintain an inventory of all interests in land held by public and
20 private land trust and to exercise all powers vested herein to ensure the preservation of all
21 identified lands;

22 (i) The director may promulgate and enforce rules and regulations to provide for the
23 orderly and consistent protection, management, continuity of ownership and purpose, and
24 centralized records-keeping for lands, water, and open spaces owned in fee or controlled in full or
25 in part through other interests, rights, or devices such as conservation easements or restrictions,
26 by private and public land trusts in Rhode Island. The director may charge a reasonable fee for
27 filing of each document submitted by a land trust;

28 (ii) The term "public land trust" means any public instrumentality created by a Rhode
29 Island municipality for the purposes stated herein and financed by means of public funds
30 collected and appropriated by the municipality. The term "private land trust" means any group of
31 five (5) or more private citizens of Rhode Island who shall incorporate under the laws of Rhode
32 Island as a nonbusiness corporation for the purposes stated herein, or a national organization such
33 as the nature conservancy. The main purpose of either a public or a private land trust shall be the
34 protection, acquisition, or control of land, water, wildlife, wildlife habitat, plants, and/or other

1 natural features, areas, or open space for the purpose of managing or maintaining, or causing to
2 be managed or maintained by others, the land, water, and other natural amenities in any
3 undeveloped and relatively natural state in perpetuity. A private land trust must be granted
4 exemption from federal income tax under Internal Revenue Code 501(c)(3) [26 U.S.C. §
5 501(c)(3)] within two (2) years of its incorporation in Rhode Island or it may not continue to
6 function as a land trust in Rhode Island. A private land trust may not be incorporated for the
7 exclusive purpose of acquiring or accepting property or rights in property from a single
8 individual, family, corporation, business, partnership, or other entity. Membership in any private
9 land trust must be open to any individual subscribing to the purposes of the land trust and
10 agreeing to abide by its rules and regulations including payment of reasonable dues;

11 (iii)(A) Private land trusts will, in their articles of association or their bylaws, as
12 appropriate, provide for the transfer to an organization, created for the same or similar purposes,
13 of the assets, lands and land rights, and interests held by the land trust in the event of termination
14 or dissolution of the land trust.

15 (B) All land trusts, public and private, will record in the public records, of the appropriate
16 towns and cities in Rhode Island, all deeds, conservation easements, or restrictions or other
17 interests and rights acquired in land and will also file copies of all such documents and current
18 copies of their articles of association, their bylaws, and their annual reports with the secretary of
19 state and with the director of the Rhode Island department of environmental management. The
20 director is hereby directed to establish and maintain permanently a system for keeping records of
21 all private and public land trust land holdings in Rhode Island.

22 (29) The director will contact in writing, not less often than once every two (2) years,
23 each public or private land trust to ascertain: that all lands held by the land trust are recorded with
24 the director; the current status and condition of each land holding; that any funds or other assets
25 of the land trust held as endowment for specific lands have been properly audited at least once
26 within the two-year (2) period; the name of the successor organization named in the public or
27 private land trust's bylaws or articles of association; and any other information the director deems
28 essential to the proper and continuous protection and management of land and interests or rights
29 in land held by the land trust. In the event that the director determines that a public or private land
30 trust holding land or interest in land appears to have become inactive, he or she shall initiate
31 proceedings to effect the termination of the land trust and the transfer of its lands, assets, land
32 rights, and land interests to the successor organization named in the defaulting trust's bylaws or
33 articles of association or to another organization created for the same or similar purposes. Should
34 such a transfer not be possible, then the land trust, assets, and interest and rights in land will be

1 held in trust by the state of Rhode Island and managed by the director for the purposes stated at
2 the time of original acquisition by the trust. Any trust assets or interests other than land or rights
3 in land accruing to the state under such circumstances will be held and managed as a separate
4 fund for the benefit of the designated trust lands;

5 (30) Consistent with federal standards, issue and enforce such rules, regulations, and
6 orders as may be necessary to establish requirements for maintaining evidence of financial
7 responsibility for taking corrective action and compensating third parties for bodily injury and
8 property damage caused by sudden and non-sudden accidental releases arising from operating
9 underground storage tanks;

10 (31) To enforce, by such means as provided by law, the standards for the quality of air,
11 and water, and the location, design, construction, and operation of all underground storage
12 facilities used for storing petroleum products or hazardous materials; any order or notice issued
13 by the director relating to the location, design, construction, operation, or maintenance of an
14 underground storage facility used for storing petroleum products or hazardous materials shall be
15 eligible for recordation under chapter 13 of title 34. The director shall forward the order or notice
16 to the city or town wherein the subject facility is located, and the order or notice shall be recorded
17 in the general index by the appropriate municipal officer in the land-evidence records in the city
18 or town wherein the subject facility is located. Any subsequent transferee of that facility shall be
19 responsible for complying with the requirements of the order or notice. Upon satisfactory
20 completion of the requirements of the order or notice, the director shall provide written notice of
21 the same, which notice shall be eligible for recordation. The original, written notice shall be
22 forwarded to the city or town wherein the subject facility is located, and the notice of satisfactory
23 completion shall be recorded in the general index by the appropriate municipal official in the
24 land-evidence records in the city or town wherein the subject facility is located. A copy of the
25 written notice shall be forwarded to the owner of the subject facility within five (5) days of a
26 request for it, and, in any event, shall be forwarded to the owner of the subject facility within
27 thirty (30) days after correction;

28 (32) To manage and disburse any and all funds collected pursuant to § 46-12.9-4, in
29 accordance with § 46-12.9-5, and other provisions of the Rhode Island Underground Storage
30 Tank Financial Responsibility Act, as amended;

31 (33) To support, facilitate, and assist the Rhode Island Natural History Survey, as
32 appropriate and/or as necessary, in order to accomplish the important public purposes of the
33 survey in gathering and maintaining data on Rhode Island natural history; making public
34 presentations and reports on natural history topics; ranking species and natural communities;

1 monitoring rare species and communities; consulting on open-space acquisitions and management
2 plans; reviewing proposed federal and state actions and regulations with regard to their potential
3 impact on natural communities; and seeking outside funding for wildlife management, land
4 management, and research;

5 (34) To promote the effective stewardship of: (i) lakes, ponds, rivers, and streams
6 including, but not limited to, collaboration with watershed organizations and associations of
7 lakefront property owners on planning and management actions that will prevent and mitigate
8 water quality degradation, reduce the loss of native habitat due to infestation of non-native
9 species, abate nuisance conditions that result from excessive growth of algal or non-native plant
10 species as well as promote healthy freshwater riverine ecosystems; and (ii) woodlands and
11 forests, including, but not limited to, collaboration with nonprofit conservation organizations,
12 conservation districts, land trusts, woodland and forestry associations, woodland property owners
13 associations, and towns and cities, on planning and management actions that will prevent and
14 mitigate the impairment of woodland ecology, maintain habitat diversity, reduce loss due to
15 disease and pests, and promote healthy woodland ecosystems;

16 (35) In implementing the programs established pursuant to this chapter, to identify
17 critical areas for improving service to customers doing business with the department, and to
18 develop and implement strategies to improve performance and effectiveness in those areas. Key
19 aspects of a customer-service program shall include, but not necessarily be limited to, the
20 following components:

21 (a) Maintenance of an organizational unit within the department with the express purpose
22 of providing technical assistance to customers and helping customers comply with environmental
23 regulations and requirements;

24 (b) Maintenance of an employee-training program to promote customer service across the
25 department;

26 (c) Implementation of a continuous business process evaluation and improvement effort,
27 including process reviews to encourage development of quality proposals; ensure timely and
28 predictable reviews; and result in effective decisions and consistent follow up and implementation
29 throughout the department; and publish an annual report on such efforts;

30 (d) Creation of a centralized location for the acceptance of permit applications and other
31 submissions to the department;

32 (e) Maintenance of a process to promote, organize, and facilitate meetings prior to the
33 submission of applications or other proposals in order to inform the applicant on options and
34 opportunities to minimize environmental impact; improve the potential for sustainable

1 environmental compliance; and support an effective and efficient review and decision-making
2 process on permit applications related to the proposed project;

3 (f) Development of single permits under multiple authorities otherwise provided in state
4 law to support comprehensive and coordinated reviews of proposed projects. The director may
5 address and resolve conflicting or redundant process requirements in order to achieve an effective
6 and efficient review process that meets environmental objectives; and

7 (g) Exploration of the use of performance-based regulations coupled with adequate
8 inspection and oversight, as an alternative to requiring applications or submissions for approval
9 prior to initiation of projects. The department shall work with the office of regulatory reform to
10 evaluate the potential for adopting alternative compliance approaches and provide a report to the
11 governor and the general assembly by May 1, 2015;

12 (36) To formulate and promulgate regulations requiring any dock or pier longer than
13 twenty feet (20') and located on a freshwater lake or pond to be equipped with reflective
14 materials, on all sides facing the water, of an appropriate width and luminosity such that it can be
15 seen by operators of watercraft; and

16 (37) To temporarily waive any control or prohibition respecting the use of a fuel or fuel
17 additive required or regulated by the department if the director finds that:

18 (i) Extreme or unusual fuel or fuel additive supply circumstances exist in the state or the
19 New England region that prevent the distribution of an adequate supply of the fuel or fuel
20 additive to consumers;

21 (ii) Extreme or unusual fuel or fuel additive supply circumstances are the result of a
22 natural disaster, an act of God, a pipeline or refinery equipment failure, or another event that
23 could not reasonably have been foreseen; and

24 (iii) It is in the public interest to grant the waiver.

25 Any temporary waiver shall be made in writing and shall be effective for twenty (20)
26 calendar days; provided, that the director may renew the temporary waiver, in writing, if it is
27 deemed necessary.

28 **42-17.1-4. Divisions within department.**

29 Within the department of environmental management there are established the following
30 divisions:

31 (1) A division of parks and recreation that shall carry out those functions of the
32 department relating to the operation and maintenance of parks and recreation areas and the
33 establishment and maintenance of such additional recreation areas as may from time to time be
34 acquired and such other functions and duties as may, from time to time, be assigned by the

1 director;

2 (2) A division of fish and wildlife management that shall carry out those functions of the
3 department relating to the administration and management of hunting and freshwater fishing; the
4 preservation of wetlands, marsh lands, freshwater lakes, streams, ponds, and wildlife; and such
5 other related functions and duties as may be assigned by the director;

6 (3) A division of agriculture that shall carry out those functions of the department relating
7 to agriculture, and such other functions and duties as may from time to time be assigned by the
8 director, including, but not limited to, plant industry, farm viability, marketing and promotion,
9 farmland ecology and protection, plant and animal health and quarantine, pesticides, mosquito
10 abatement, pest survey and response, food policy and security, and, in collaboration with the
11 department of health, public health as it relates to farm production and direct marketing of farm
12 products, and those agreed upon through memorandum of agreement with the department of
13 health or other state agencies. The department of health shall continue to act as the lead agency
14 for all public health issues in the state pursuant to chapter 1 of title 23. Nothing herein contained
15 shall limit the department of health's statutory authority, nor shall any provision herein be
16 construed as a limitation upon the statutory authority of the department of health granted to the
17 department under title 23 of the general laws, nor shall any provision herein be construed to limit
18 the authority of the department of environmental management to enter into memoranda of
19 agreement with any governmental agency. The chief of the division of agriculture shall report
20 directly to the director;

21 (4) A division of coastal resources that shall carry out those functions of the department
22 relating to harbors and harbor lines, pilotage, flood control, shore development, construction of
23 port facilities, and the registration of boats and such other functions and duties as may, from time
24 to time, be assigned by the director, except that the division shall not be responsible for the
25 functions of inspection of dams and reservoirs, approving plans for construction or improvement
26 of dams, reservoirs, and other structures in non-tidal waters, and the operation of stream-gauging
27 stations in cooperation with the United States Geological Survey, and provided, further, that the
28 division and its staff shall be responsible through the director of environmental management to
29 the coastal resources management council, and the chief and the staff of the division shall serve
30 as staff to the council;

31 (5) A division of planning and development that shall carry out those functions of the
32 department relating to planning, programming, acquisition of land, engineering studies, and such
33 other studies, as the director may direct, and that shall work with the Rhode Island board of
34 education, with educational institutions at all levels, and with the public in the dissemination of

1 information and education relating to natural resources, and shall perform the publication and
2 public relations functions of the department, the functions of inspection of dams and reservoirs,
3 approving plans for construction or improvement of dams, reservoirs, and other structures in non-
4 tidal waters, and the operation of stream-gauging stations in cooperation with the United States
5 Geological Survey;

6 (6) A division of enforcement that shall enforce all of the laws and regulations of the
7 department and the coastal resources management council, that shall cooperate with the other
8 enforcement agencies of the state and its municipalities, and that shall administer all of the
9 policing, enforcing, licensing, registration, and inspection functions of the department and such
10 other functions and duties as may, from time to time, be assigned by the director;

11 (7) A division of forest environment that shall carry out those functions of the department
12 relating to the administration of forests and natural areas, including programs for utilization,
13 conservation, forest fire protection, and improvements of these areas; assisting other agencies and
14 local governments in urban programs relating to trees, forests, green belts, and environment;
15 [implementing the provisions and purposes of chapter 10.1 of this title](#) and such other functions
16 and duties as may, from time to time, be assigned by the director;

17 (8)(i) A division of boating safety that shall carry out those functions of the department
18 relating to the development and administration of a coordinated, safe boating program in
19 accordance with the Model Safe Boating Act of 1971 as approved by the National Association of
20 State Boating Law Administrators.

21 (ii) Administration of the division of boating safety shall be the responsibility of the state
22 boating law administrator whose duties shall include:

23 (A) The enforcement of all laws relating to the act; and

24 (B) The powers vested in the state boating law administrator and boating safety
25 enforcement officer shall include the enforcement of laws, rules and regulations relating to
26 "Regulation of Boats," chapter 22 of title 46 and shall also include the power to:

27 (I) Execute all warrants and search warrants for the violation of laws, rules, and
28 regulations relating to the act.

29 (II) Serve subpoenas issued for the trial of all offenses hereunder.

30 (III) To carry firearms or other weapons, concealed or otherwise, in the course of, and in
31 performance of, their duties under this chapter.

32 (IV) To arrest without warrant and on view any person found violating any law, rule, or
33 regulation relating to the act; take that person before a court having jurisdiction for trial; detain
34 that person in custody at the expense of the state until arraignment; and to make and execute

1 complaints within any district to the justice or clerk of the court against any person for any of the
2 offenses enumerated under the act committed within the district.

3 (V) Boating safety enforcement officers shall not be required to give surety for costs
4 upon any complaint made by him or her.

5 (iii) The development and administration of a coordinated, safe boating program.

6 (iv) The establishment and enforcement of such rules and regulations as are deemed
7 necessary to achieve the purposes of the Model Safe Boating Act as approved by the state boating
8 law administrators.

9 (v) The state boating law administrator shall serve as the liaison to the United States
10 Coast Guard; and

11 (9) A division of marine fisheries management that shall carry out those functions of the
12 department relating to the administration, management, and harvest of marine animal and plant
13 species found in Rhode Island marine waters, including, but not limited to: stock assessments of
14 marine species; harvest of marine species regulated under a regional federal fisheries
15 management plan; the review of aquaculture applications before the CRMC; a commercial fishing
16 licensing program; fixing seasons, bag limits, size limits, possession limits, and methods of taking
17 on any marine plant and animal species; and such other related functions and duties as may be
18 assigned by the director.

19 SECTION 4. Sections 45-22.2-4 and 45-22.2-6 of the General Laws in Chapter 45-22.2
20 entitled "Rhode Island Comprehensive Planning and Land Use Act" are hereby amended to read
21 as follows:

22 **45-22.2-4. Definitions.**

23 As used in this chapter the following words have the meanings stated herein:

24 (1) "Agricultural land" means land suitable for agriculture by reason of suitability of soil
25 or other natural characteristics or past use for agricultural purposes.

26 (2) "Capacity" or "land capacity" means the suitability of the land, as defined by geology,
27 soil conditions, topography, and water resources, to support its development for uses such as
28 residential, commercial, industrial, open space, or recreation. Land capacity may be modified by
29 provision of facilities and services.

30 (3) "Capital improvements program" means a proposed schedule of all future projects
31 listed in order of construction priority together with cost estimates and the anticipated means of
32 financing each project.

33 (4) "Chief" means the highest-ranking administrative officer of the division of planning
34 as established by subsection 42-11-10(g).

1 (5) "Coastal features" means any coastal beach, barrier island or spit, coastal wetland,
2 coastal headland, bluff or cliff, rocky shore, manmade shoreline or dune as outlined and defined
3 by the coastal resources management program, and as may be amended.

4 (6) "Comprehensive plan" or "comprehensive land use plan" means a document
5 containing the components described in this chapter, including the implementation program
6 which is consistent with the goals and guidelines established by this chapter.

7 (7) "Days" means calendar days.

8 (8) "Division of planning" means the office established as a division of the department of
9 administration by subsection 42-11-10(g).

10 (9) "Floodplains" or "flood hazard area" means an area that is subject to a flood from a
11 storm having a one percent (1%) chance of being equaled or exceeded in any given year, as
12 delineated on a community's flood hazard map as approved by the federal emergency
13 management agency pursuant to the National Flood Insurance Act of 1968, as amended (P.L. 90-
14 448), 42 U.S.C. § 4011 et seq.

15 (10) "Forecast" means a description of the conditions, quantities, or values anticipated to
16 occur at a designated future time.

17 (11) "Goals" means those goals stated in § 45-22.2-3.

18 (12) "Historic or cultural resource" means any real property, structure, natural object,
19 place, landmark, landscape, archaeological site or configuration or any portion or group of the
20 preceding which has been listed on the federal or state register of historic places or that is
21 considered by the Rhode Island Historical Preservation & Heritage Commission to meet the
22 eligibility criteria for listing on the state register of historic places pursuant to § 42-45-5 or is
23 located in a historic district established by a municipality in accordance with chapter 45-24.1,
24 Historic Area Zoning.

25 (13) "Land" means real property including improvements and fixtures on, above, or
26 below the surface.

27 (14) "Land use regulation" means a rule or statute of general application adopted by the
28 municipal legislative body which controls, directs, or delineates allowable uses of land and the
29 standards for these uses.

30 (15) "Local government" means any governmental agency authorized by this chapter to
31 exercise the power granted by this chapter.

32 (16) "Maintain" means to evaluate regularly and revise as needed or required in order to
33 ensure that a comprehensive plan remains consistent with the goals and guidelines established by
34 this chapter.

1 (17) "Municipal legislative body" means the town council in a town or the city council in
2 a city; or that part of a municipal government that exercises legislative powers under a statute or
3 charter.

4 (18) "Municipal reviewing authority" means the municipal planning board or
5 commission.

6 (19) "Open space" means any parcel or area of land or water set aside, dedicated,
7 designated, or reserved for public or private use or enjoyment or for the use and enjoyment of
8 owners and occupants of land adjoining or neighboring the open space; provided that the area
9 may be improved with only those buildings, structures, streets, and off-street parking, and other
10 improvements that are designed to be incidental to the natural openness of the land.

11 (20) "Planning board" or "commission" means the body established by a municipality
12 under chapter 45-22 or combination of municipalities which has the responsibility to prepare a
13 comprehensive plan and make recommendations concerning that plan to the municipal legislative
14 body.

15 (21) "State guide plan" means goals, policies, and plans or plan elements for the physical,
16 economic, and social development of the state, adopted by the state planning council in
17 accordance with § 42-11-10.

18 (22) "State or regional agency" means, for the purposes of this chapter, any state agency,
19 department, public authority, public corporation, organization, commission, or other governing
20 body with regulatory or other authority affecting the goals established either in this chapter or the
21 state guide plan. Pursuant to § 45-22.2-2, the definition of state and regional agency shall not be
22 construed to supersede or diminish any regulatory authority granted by state or federal statute.

23 (23) "State agency program or project" State agency program means any non-regulatory,
24 coordinated group of activities implemented for the purpose of achieving a specific goal or
25 objective. State agency project means a specific initiative or development on an identifiable
26 parcel(s) of land.

27 (24) "Voluntary association of local governments" means two (2) or more municipalities
28 that have joined together pursuant to a written agreement and pursuant to the authority granted
29 under this chapter for the purpose of drafting a comprehensive land use plan and implementation
30 program.

31 (25) "Wetland" a marsh, swamp, bog, pond, river, river or stream flood plain or bank; an
32 area subject to flooding or storm flowage; an emergent or submergent plant community in any
33 body of fresh water; or an area within fifty feet (50') of the edge of a bog, marsh, swamp, or pond,
34 as defined in § 2-1-20; or any salt marsh bordering on the tidal waters of this state, whether or not

1 the tidal waters reach the littoral areas through natural or artificial watercourses, and those
2 uplands directly associated and contiguous thereto which are necessary to preserve the integrity
3 of that marsh, and as further defined by the RI coastal resources management program, as may be
4 amended.

5 (26) "Woodland" means an area of forty thousand (40,000) square feet or greater
6 predominantly covered and characterized by tree stock natural in Rhode Island.

7 ~~(26)~~(27) "Zoning" means the reservation of certain specified areas within a community or
8 city for building and structures, or use of land, for certain purposes with other limitations as
9 height, lot coverage, and other stipulated requirements.

10 **45-22.2-6. Required content of a comprehensive plan.**

11 (a) The comprehensive plan must utilize a minimum twenty (20) year planning timeframe
12 in considering forecasts, goals, and policies.

13 (b) The comprehensive plan must be internally consistent in its policies, forecasts, and
14 standards, and shall include the content described within this section. The content described in
15 subdivisions (1) through (10) may be organized and presented as deemed suitable and appropriate
16 by the municipality. The content described in subdivisions (11) and (12) must be included as
17 individual sections of the plan.

18 (1) Goals and policies. The plan must identify the goals and policies of the municipality
19 for its future growth and development and for the conservation of its natural and cultural
20 resources. The goals and policies of the plan shall be consistent with the goals and intent of this
21 chapter and embody the goals and policies of the state guide plan.

22 (2) Maps. The plan must contain maps illustrating the following as appropriate to the
23 municipality:

24 (i) Existing conditions:

25 (A) Land use, including the range of residential housing densities;

26 (B) Zoning;

27 (C) Key infrastructure such as, but not limited to, roads, public water, and sewer;

28 (D) Service areas for public water and sewer;

29 (E) Historical and cultural resource areas and sites;

30 (F) Open space and conservation areas (public and private); and

31 (G) Natural resources such as, but not limited to, surface water, wetlands, floodplains,
32 soils, woodland, and agricultural land;

33 (ii) Future land use illustrating the desired patterns of development, density, and
34 conservation as defined by the comprehensive plan; and

1 (iii) Identification of discrepancies between future land uses and existing zoning use
2 categories.

3 (3) Natural resource identification and conservation. The plan must be based on an
4 inventory of significant natural resource areas such as, but not limited to, water, soils, prime
5 agricultural lands, [woodland and](#) forests, wildlife, wetlands, aquifers, coastal features, and
6 floodplains. The plan must include goals, policies, and implementation techniques for the
7 protection and management of these areas.

8 (4) Open space and outdoor recreation identification and protection. The plan must be
9 based on an inventory of outdoor recreational resources, open space areas, and recorded access to
10 these resources and areas. The plan must contain an analysis of forecasted needs, policies for the
11 management and protection of these resources and areas, and identification of areas for potential
12 expansion. The plan must include goals, policies, and implementation techniques for the
13 protection and management of existing resources and acquisition of additional resources if
14 appropriate.

15 (5) Historical and cultural resources identification and protection. The plan must be based
16 on an inventory of significant historical and cultural resources such as historical buildings, sites,
17 landmarks, and scenic views. The plan must include goals, policies, and implementation
18 techniques for the protection of these resources.

19 (6) Housing. The plan must include the identification of existing housing patterns, an
20 analysis of existing and forecasted housing needs, and identification of areas suitable for future
21 housing development or rehabilitation. The plan shall include an affordable housing program that
22 meets the requirements of § 42-128-8.1, the "Comprehensive Housing Production and
23 Rehabilitation Act of 2004" and chapter 45-53, the "Rhode Island Low and Moderate Income
24 Housing Act". The plan must include goals and policies that further the goal of subdivision 45-
25 22.2-3(c)(3) and implementation techniques that identify specific programs to promote the
26 preservation, production, and rehabilitation of housing.

27 (7) Economic development. The plan must include the identification of existing types and
28 patterns of economic activities including, but not limited to, business, commercial, industrial,
29 agricultural, and tourism. The plan must also identify areas suitable for future economic
30 expansion or revitalization. The plan must include goals, policies, and implementation techniques
31 reflecting local, regional, and statewide concerns for the expansion and stabilization of the
32 economic base and the promotion of quality employment opportunities and job growth.

33 (8) Services and facilities. The plan must be based on an inventory of existing physical
34 infrastructure such as, but not limited to, educational facilities, public safety facilities, libraries,

1 indoor recreation facilities, and community centers. The plan must describe services provided to
2 the community such as, but not limited to, water supply and the management of wastewater,
3 storm water, and solid waste. The plan must consider energy production and consumption. The
4 plan must analyze the needs for future types and levels of services and facilities, including, in
5 accordance with § 46-15.3-5.1, water supply system management planning, which includes
6 demand management goals as well as plans for water conservation and efficient use of water
7 concerning any water supplier providing service in the municipality, and contain goals, policies,
8 and implementation techniques for meeting future demands.

9 (9) Circulation/Transportation. The plan must be based on an inventory and analysis of
10 existing and proposed major circulation systems, including transit and bikeways; street patterns;
11 and any other modes of transportation, including pedestrian, in coordination with the land use
12 element. Goals, policies, and implementation techniques for the provision of fast, safe, efficient,
13 and convenient transportation that promotes conservation and environmental stewardship must be
14 identified.

15 (10) Natural hazards. The plan must include an identification of areas that could be
16 vulnerable to the effects of sea-level rise, flooding, storm damage, drought, or other natural
17 hazards. Goals, policies, and implementation techniques must be identified that would help to
18 avoid or minimize the effects that natural hazards pose to lives, infrastructure, and property.

19 (11) Land use. In conjunction with the future land use map as required in subdivision 45-
20 22.2-6(b)(2)(ii), the plan must contain a land use component that designates the proposed general
21 distribution and general location and interrelationships of land uses including, but not limited to,
22 residential, commercial, industrial, open space, agriculture, recreation facilities, and other
23 categories of public and private uses of land. The land use component shall be based upon the
24 required plan content as stated in this section. It shall relate the proposed standards of population
25 density and building intensity to the capacity of the land and available or planned facilities and
26 services. The land use component must contain an analysis of the inconsistency of existing
27 zoning districts, if any, with planned future land use. The land use component shall specify the
28 process and schedule by which the zoning ordinance and zoning map shall be amended to
29 conform to the comprehensive plan and shall be included as part of the implementation program.

30 (12) Implementation program.

31 (i) A statement which defines and schedules the specific public actions to be undertaken
32 in order to achieve the goals and objectives of each component of the comprehensive plan.
33 Scheduled expansion or replacement of public facilities, and the anticipated costs and revenue
34 sources proposed to meet those costs reflected in a municipality's capital improvement program,

1 must be included in the implementation program.

2 (ii) The implementation program identifies the public actions necessary to implement the
3 objectives and standards of each component of the comprehensive plan that require the adoption
4 or amendment of codes and ordinances by the governing body of the municipality.

5 (iii) The implementation program identifies other public authorities or agencies owning
6 water supply facilities or providing water supply services to the municipality, and coordinates the
7 goals and objectives of the comprehensive plan with the actions of public authorities or agencies
8 with regard to the protection of watersheds as provided in § 46-15.3-1, et seq.

9 (iv) The implementation program must detail the timing and schedule of municipal
10 actions required to amend the zoning ordinance and map to conform to the comprehensive plan.

11 SECTION 5. Sections 45-24-30, 45-24-31 and 45-24-33 of the General Laws in Chapter
12 45-24 entitled "Zoning Ordinances" are hereby amended to read as follows:

13 **45-24-30. General purposes of zoning ordinances.**

14 (a) Zoning regulations shall be developed and maintained in accordance with a
15 comprehensive plan prepared, adopted, and as may be amended, in accordance with chapter 22.2
16 of this title and shall be designed to address the following purposes. The general assembly
17 recognizes these purposes, each with equal priority and numbered for reference purposes only.

18 (1) Promoting the public health, safety, and general welfare.

19 (2) Providing for a range of uses and intensities of use appropriate to the character of the
20 city or town and reflecting current and expected future needs.

21 (3) Providing for orderly growth and development that recognizes:

22 (i) The goals and patterns of land use contained in the comprehensive plan of the city or
23 town adopted pursuant to chapter 22.2 of this title;

24 (ii) The natural characteristics of the land, including its suitability for use based on soil
25 characteristics, topography, and susceptibility to surface or groundwater pollution;

26 (iii) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and
27 freshwater and coastal wetlands;

28 (iv) The values of unique or valuable natural resources and features;

29 (v) The availability and capacity of existing and planned public and/or private services
30 and facilities;

31 (vi) The need to shape and balance urban and rural development; and

32 (vii) The use of innovative development regulations and techniques.

33 (4) Providing for the control, protection, and/or abatement of air, water, groundwater, and
34 noise pollution, and soil erosion and sedimentation.

1 (5) Providing for the protection of the natural, historic, cultural, and scenic character of
2 the city or town or areas in the municipality.

3 (6) Providing for the preservation and promotion of agricultural production, forest [and](#)
4 [woodland](#), silviculture, aquaculture, timber resources, and open space.

5 (7) Providing for the protection of public investment in transportation, water, stormwater
6 management systems, sewage treatment and disposal, solid waste treatment and disposal, schools,
7 recreation, public facilities, open space, and other public requirements.

8 (8) Promoting a balance of housing choices, for all income levels and groups, to assure
9 the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and
10 sanitary housing.

11 (9) Providing opportunities for the establishment of low- and moderate-income housing.

12 (10) Promoting safety from fire, flood, and other natural or unnatural disasters.

13 (11) Promoting a high level of quality in design in the development of private and public
14 facilities.

15 (12) Promoting implementation of the comprehensive plan of the city or town adopted
16 pursuant to chapter 22.2 of this title.

17 (13) Providing for coordination of land uses with contiguous municipalities, other
18 municipalities, the state, and other agencies, as appropriate, especially with regard to resources
19 and facilities that extend beyond municipal boundaries or have a direct impact on that
20 municipality.

21 (14) Providing for efficient review of development proposals, to clarify and expedite the
22 zoning approval process.

23 (15) Providing for procedures for the administration of the zoning ordinance, including,
24 but not limited to, variances, special-use permits, and, where adopted, procedures for
25 modifications.

26 (16) Providing opportunities for reasonable accommodations in order to comply with the
27 Rhode Island Fair Housing Practices Act, chapter 37 of title 34; the United States Fair Housing
28 Amendments Act of 1988 (FHAA); the Rhode Island Civil Rights of Persons with Disabilities
29 Act, chapter 87 of title 42; and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §
30 12101 et seq.

31 Provided, however, that any zoning ordinance in which a community sets forth standards
32 or requirements for the location, design, construction, or maintenance of on-site wastewater
33 treatment systems shall first be submitted to the director of the department of environmental
34 management for approval as to the technical merits of the ordinance. In addition, any zoning

1 ordinance in which a municipality sets forth standards regarding wetland requirements, shall first
2 be submitted to the director of the department of environmental management for approval as to
3 the technical merits of the ordinance.

4 (b) Upon the effective date of this section, a city or town shall no longer be authorized to
5 adopt as a provision of its zoning ordinance new requirements that specify buffers or setbacks in
6 relation to freshwater wetland, freshwater wetland in the vicinity of the coast, or coastal wetland
7 or that specify setback distances between an onsite wastewater treatment system and a freshwater
8 wetlands, freshwater wetland in the vicinity of the coast, or coastal wetland.

9 (c) Upon promulgation of state regulations to designate wetland buffers and setbacks
10 pursuant to §§ 2-1-18 through 2-1-28, cities and towns shall be prohibited from applying the
11 requirements in existing zoning ordinances pertaining to both wetland buffers and onsite
12 wastewater treatment system setbacks to development applications submitted to a municipality
13 after the effective date of said state regulations. All applications for development that were
14 submitted to a municipality prior to the effective date of state regulations designating wetland
15 buffers and setbacks, will remain subject to, as applicable, the zoning provisions pertaining to
16 wetland buffers or setbacks for onsite wastewater treatment systems that were in effect at the time
17 the application was originally filed or granted approval, subject to the discretion of the
18 municipality to waive such requirements. Nothing herein shall rescind the authority of a city or
19 town to enforce local zoning requirements.

20 (d) Cities and towns shall act to amend their ordinances and regulations to conform to
21 this section within twelve (12) months of the effective date of state regulations referenced herein.

22 **45-24-31. Definitions. [Effective March 1, 2019.]**

23 Where words or terms used in this chapter are defined in § 45-22.2-4 or 45-23-32, they
24 have the meanings stated in that section. In addition, the following words have the following
25 meanings. Additional words and phrases may be used in developing local ordinances under this
26 chapter; however, the words and phrases defined in this section are controlling in all local
27 ordinances created under this chapter:

28 (1) Abutter. One whose property abuts, that is, adjoins at a border, boundary, or point
29 with no intervening land.

30 (2) Accessory dwelling unit. A dwelling unit: (i) Rented to and occupied either by one or
31 more members of the family of the occupant or occupants of the principal residence; or (ii)
32 Reserved for rental occupancy by a person or a family where the principal residence is owner
33 occupied and that meets the following provisions:

34 (A) In zoning districts that allow residential uses, no more than one accessory dwelling

1 unit may be an accessory to a single-family dwelling.

2 (B) An accessory dwelling unit shall include separate cooking and sanitary facilities, with
3 its own legal means of ingress and egress, and is a complete, separate dwelling unit. The
4 accessory dwelling unit shall be within, or attached to, the principal dwelling-unit structure or
5 within an existing structure, such as a garage or barn, and designed so that the appearance of the
6 principal structure remains that of a one-family residence.

7 (3) Accessory use. A use of land or of a building, or portion thereof, customarily
8 incidental and subordinate to the principal use of the land or building. An accessory use may be
9 restricted to the same lot as the principal use. An accessory use shall not be permitted without the
10 principal use to which it is related.

11 (4) Aggrieved party. An aggrieved party, for purposes of this chapter, shall be:

12 (i) Any person, or persons, or entity, or entities, who or that can demonstrate that his, her,
13 or its property will be injured by a decision of any officer or agency responsible for administering
14 the zoning ordinance of a city or town; or

15 (ii) Anyone requiring notice pursuant to this chapter.

16 (5) Agricultural land. "Agricultural land", as defined in § 45-22.2-4.

17 (6) Airport hazard area. "Airport hazard area", as defined in § 1-3-2.

18 (7) Applicant. An owner, or authorized agent of the owner, submitting an application or
19 appealing an action of any official, board, or agency.

20 (8) Application. The completed form, or forms, and all accompanying documents,
21 exhibits, and fees required of an applicant by an approving authority for development review,
22 approval, or permitting purposes.

23 (9) Buffer. Land that is maintained in either a natural or landscaped state, and is used to
24 screen or mitigate the impacts of development on surrounding areas, properties, or rights-of-way.

25 (10) Building. Any structure used or intended for supporting or sheltering any use or
26 occupancy.

27 (11) Building envelope. The three-dimensional space within which a structure is
28 permitted to be built on a lot and that is defined by regulations governing building setbacks,
29 maximum height, and bulk; by other regulations; or by any combination thereof.

30 (12) Building height. For a vacant parcel of land, building height shall be measured from
31 the average, existing-grade elevation where the foundation of the structure is proposed. For an
32 existing structure, building height shall be measured from average grade taken from the outermost
33 four (4) corners of the existing foundation. In all cases, building height shall be measured to the
34 top of the highest point of the existing or proposed roof or structure. This distance shall exclude

1 spires, chimneys, flag poles, and the like. For any property or structure located in a special flood
2 hazard area, as shown on the official FEMA Flood Insurance Rate Maps (FIRMs), building height
3 shall be measured from base flood elevation, and where freeboard, as defined in this section, is
4 being utilized or proposed, such freeboard area, not to exceed five feet (5'), shall be excluded
5 from the building height calculation; provided, however that the Rhode Island coastal resources
6 management council design elevation maps may be used by an owner or applicant to establish a
7 base flood elevation for a property that is higher than the official FEMA FIRMs.

8 (13) Cluster. A site-planning technique that concentrates buildings in specific areas on
9 the site to allow the remaining land to be used for recreation, common open space, and/or
10 preservation of environmentally, historically, culturally, or other sensitive features and/or
11 structures. The techniques used to concentrate buildings shall be specified in the ordinance and
12 may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk
13 requirements, with the resultant open land being devoted by deed restrictions for one or more
14 uses. Under cluster development, there is no increase in the number of lots that would be
15 permitted under conventional development except where ordinance provisions include incentive
16 bonuses for certain types or conditions of development.

17 (14) Common ownership. Either:

18 (i) Ownership by one or more individuals or entities in any form of ownership of two (2)
19 or more contiguous lots; or

20 (ii) Ownership by any association (ownership may also include a municipality) of one or
21 more lots under specific development techniques.

22 (15) Community residence. A home or residential facility where children and/or adults
23 reside in a family setting and may or may not receive supervised care. This does not include
24 halfway houses or substance-use-disorder-treatment facilities. This does include, but is not
25 limited to, the following:

26 (i) Whenever six (6) or fewer children or adults with intellectual and/or developmental
27 disability reside in any type of residence in the community, as licensed by the state pursuant to
28 chapter 24 of title 40.1. All requirements pertaining to local zoning are waived for these
29 community residences;

30 (ii) A group home providing care or supervision, or both, to not more than eight (8)
31 persons with disabilities, and licensed by the state pursuant to chapter 24 of title 40.1;

32 (iii) A residence for children providing care or supervision, or both, to not more than
33 eight (8) children, including those of the caregiver, and licensed by the state pursuant to chapter
34 72.1 of title 42;

1 (iv) A community transitional residence providing care or assistance, or both, to no more
2 than six (6) unrelated persons or no more than three (3) families, not to exceed a total of eight (8)
3 persons, requiring temporary financial assistance, and/or to persons who are victims of crimes,
4 abuse, or neglect, and who are expected to reside in that residence not less than sixty (60) days
5 nor more than two (2) years. Residents will have access to, and use of, all common areas,
6 including eating areas and living rooms, and will receive appropriate social services for the
7 purpose of fostering independence, self-sufficiency, and eventual transition to a permanent living
8 situation.

9 (16) Comprehensive plan. The comprehensive plan adopted and approved pursuant to
10 chapter 22.2 of this title and to which any zoning adopted pursuant to this chapter shall be in
11 compliance.

12 (17) Day care -- Day-care center. Any other day-care center that is not a family day-care
13 home.

14 (18) Day care -- Family day-care home. Any home, other than the individual's home, in
15 which day care in lieu of parental care or supervision is offered at the same time to six (6) or less
16 individuals who are not relatives of the caregiver, but may not contain more than a total of eight
17 (8) individuals receiving day care.

18 (19) Density, residential. The number of dwelling units per unit of land.

19 (20) Development. The construction, reconstruction, conversion, structural alteration,
20 relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance;
21 or any change in use, or alteration or extension of the use, of land.

22 (21) Development plan review. The process whereby authorized, local officials review
23 the site plans, maps, and other documentation of a development to determine the compliance with
24 the stated purposes and standards of the ordinance.

25 (22) District. See "zoning-use district".

26 (23) Drainage system. A system for the removal of water from land by drains, grading, or
27 other appropriate means. These techniques may include runoff controls to minimize erosion and
28 sedimentation during and after construction or development; the means for preserving surface and
29 groundwaters; and the prevention and/or alleviation of flooding.

30 (24) Dwelling unit. A structure, or portion of a structure, providing complete,
31 independent living facilities for one or more persons, including permanent provisions for living,
32 sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

33 (25) Extractive industry. The extraction of minerals, including: solids, such as coal and
34 ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes

1 quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other
2 preparation customarily done at the extraction site or as a part of the extractive activity.

3 (26) Family. A person, or persons, related by blood, marriage, or other legal means. See
4 also "household".

5 (27) Floating zone. An unmapped zoning district adopted within the ordinance that is
6 established on the zoning map only when an application for development, meeting the zone
7 requirements, is approved.

8 (28) Floodplains, or Flood hazard area. As defined in § 45-22.2-4.

9 (29) Freeboard. A factor of safety expressed in feet above the base flood elevation of a
10 flood hazard area for purposes of floodplain management. Freeboard compensates for the many
11 unknown factors that could contribute to flood heights, such as wave action, bridge openings, and
12 the hydrological effect of urbanization of the watershed.

13 (30) Groundwater. "Groundwater" and associated terms, as defined in § 46-13.1-3.

14 (31) Halfway house. A residential facility for adults or children who have been
15 institutionalized for criminal conduct and who require a group setting to facilitate the transition to
16 a functional member of society.

17 (32) Hardship. See § 45-24-41.

18 (33) Historic district or historic site. As defined in § 45-22.2-4.

19 (34) Home occupation. Any activity customarily carried out for gain by a resident,
20 conducted as an accessory use in the resident's dwelling unit.

21 (35) Household. One or more persons living together in a single-dwelling unit, with
22 common access to, and common use of, all living and eating areas and all areas and facilities for
23 the preparation and storage of food within the dwelling unit. The term "household unit" is
24 synonymous with the term "dwelling unit" for determining the number of units allowed within
25 any structure on any lot in a zoning district. An individual household shall consist of any one of
26 the following:

27 (i) A family, which may also include servants and employees living with the family; or

28 (ii) A person or group of unrelated persons living together. The maximum number may
29 be set by local ordinance, but this maximum shall not be less than three (3).

30 (36) Incentive zoning. The process whereby the local authority may grant additional
31 development capacity in exchange for the developer's provision of a public benefit or amenity as
32 specified in local ordinances.

33 (37) Infrastructure. Facilities and services needed to sustain residential, commercial,
34 industrial, institutional, and other activities.

1 (38) Land-development project. A project in which one or more lots, tracts, or parcels of
2 land are developed or redeveloped as a coordinated site for one or more uses, units, or structures,
3 including, but not limited to, planned development or cluster development for residential,
4 commercial, institutional, recreational, open space, or mixed uses as provided in the zoning
5 ordinance.

6 (39) Lot. Either:

7 (i) The basic development unit for determination of lot area, depth, and other dimensional
8 regulations; or

9 (ii) A parcel of land whose boundaries have been established by some legal instrument,
10 such as a recorded deed or recorded map, and that is recognized as a separate legal entity for
11 purposes of transfer of title.

12 (40) Lot area. The total area within the boundaries of a lot, excluding any street right-of-
13 way, usually reported in acres or square feet.

14 (41) Lot area, minimum. The smallest land area established by the local zoning ordinance
15 upon which a use, building, or structure may be located in a particular zoning district.

16 (42) Lot building coverage. That portion of the lot that is, or may be, covered by
17 buildings and accessory buildings.

18 (43) Lot depth. The distance measured from the front lot line to the rear lot line. For lots
19 where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

20 (44) Lot frontage. That portion of a lot abutting a street. A zoning ordinance shall specify
21 how noncontiguous frontage will be considered with regard to minimum frontage requirements.

22 (45) Lot line. A line of record, bounding a lot, that divides one lot from another lot or
23 from a public or private street or any other public or private space and shall include:

24 (i) Front: the lot line separating a lot from a street right-of-way. A zoning ordinance shall
25 specify the method to be used to determine the front lot line on lots fronting on more than one
26 street, for example, corner and through lots;

27 (ii) Rear: the lot line opposite and most distant from the front lot line, or in the case of
28 triangular or otherwise irregularly shaped lots, an assumed line at least ten feet (10') in length
29 entirely within the lot, parallel to and at a maximum distance from, the front lot line; and

30 (iii) Side: any lot line other than a front or rear lot line. On a corner lot, a side lot line
31 may be a street lot line, depending on requirements of the local zoning ordinance.

32 (46) Lot size, minimum. Shall have the same meaning as "minimum lot area" defined
33 herein.

34 (47) Lot, through. A lot that fronts upon two (2) parallel streets, or that fronts upon two

1 (2) streets that do not intersect at the boundaries of the lot.

2 (48) Lot width. The horizontal distance between the side lines of a lot measured at right
3 angles to its depth along a straight line parallel to the front lot line at the minimum front setback
4 line.

5 (49) Mere inconvenience. See § 45-24-41.

6 (50) Mixed use. A mixture of land uses within a single development, building, or tract.

7 (51) Modification. Permission granted and administered by the zoning enforcement
8 officer of the city or town, and pursuant to the provisions of this chapter to grant a dimensional
9 variance other than lot area requirements from the zoning ordinance to a limited degree as
10 determined by the zoning ordinance of the city or town, but not to exceed twenty-five percent
11 (25%) of each of the applicable dimensional requirements.

12 (52) Nonconformance. A building, structure, or parcel of land, or use thereof, lawfully
13 existing at the time of the adoption or amendment of a zoning ordinance and not in conformity
14 with the provisions of that ordinance or amendment. Nonconformance is of only two (2) types:

15 (i) Nonconforming by use: a lawfully established use of land, building, or structure that is
16 not a permitted use in that zoning district. A building or structure containing more dwelling units
17 than are permitted by the use regulations of a zoning ordinance is nonconformity by use; or

18 (ii) Nonconforming by dimension: a building, structure, or parcel of land not in
19 compliance with the dimensional regulations of the zoning ordinance. Dimensional regulations
20 include all regulations of the zoning ordinance, other than those pertaining to the permitted uses.
21 A building or structure containing more dwelling units than are permitted by the use regulations
22 of a zoning ordinance is nonconforming by use; a building or structure containing a permitted
23 number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot
24 area per dwelling unit regulations, is nonconforming by dimension.

25 (53) Overlay district. A district established in a zoning ordinance that is superimposed on
26 one or more districts or parts of districts. The standards and requirements associated with an
27 overlay district may be more or less restrictive than those in the underlying districts consistent
28 with other applicable state and federal laws.

29 (54) Performance standards. A set of criteria or limits relating to elements that a
30 particular use or process must either meet or may not exceed.

31 (55) Permitted use. A use by right that is specifically authorized in a particular zoning
32 district.

33 (56) Planned development. A "land-development project", as defined in subsection (38),
34 and developed according to plan as a single entity and containing one or more structures or uses

1 with appurtenant common areas.

2 (57) Plant agriculture. The growing of plants for food or fiber, to sell or consume.

3 (58) Preapplication conference. A review meeting of a proposed development held
4 between applicants and reviewing agencies as permitted by law and municipal ordinance, before
5 formal submission of an application for a permit or for development approval.

6 (59) Setback line or lines. A line, or lines, parallel to a lot line at the minimum distance of
7 the required setback for the zoning district in which the lot is located that establishes the area
8 within which the principal structure must be erected or placed.

9 (60) Site plan. The development plan for one or more lots on which is shown the existing
10 and/or the proposed conditions of the lot.

11 (61) Slope of land. The grade, pitch, rise, or incline of the topographic landform or
12 surface of the ground.

13 (62) Special use. A regulated use that is permitted pursuant to the special-use permit
14 issued by the authorized governmental entity, pursuant to § 45-24-42. Formerly referred to as a
15 special exception.

16 (63) Structure. A combination of materials to form a construction for use, occupancy, or
17 ornamentation, whether installed on, above, or below the surface of land or water.

18 (64) Substandard lot of record. Any lot lawfully existing at the time of adoption or
19 amendment of a zoning ordinance and not in conformance with the dimensional or area
20 provisions of that ordinance.

21 (65) Use. The purpose or activity for which land or buildings are designed, arranged, or
22 intended, or for which land or buildings are occupied or maintained.

23 (66) Variance. Permission to depart from the literal requirements of a zoning ordinance.
24 An authorization for the construction or maintenance of a building or structure, or for the
25 establishment or maintenance of a use of land, that is prohibited by a zoning ordinance. There are
26 only two (2) categories of variance, a use variance or a dimensional variance.

27 (i) Use variance. Permission to depart from the use requirements of a zoning ordinance
28 where the applicant for the requested variance has shown by evidence upon the record that the
29 subject land or structure cannot yield any beneficial use if it is to conform to the provisions of the
30 zoning ordinance.

31 (ii) Dimensional variance. Permission to depart from the dimensional requirements of a
32 zoning ordinance, where the applicant for the requested relief has shown, by evidence upon the
33 record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use
34 of the subject property unless granted the requested relief from the dimensional regulations.

1 However, the fact that a use may be more profitable or that a structure may be more valuable after
2 the relief is granted are not grounds for relief.

3 (67) Waters. As defined in § 46-12-1(23).

4 (68) Wetland, coastal. As defined in § 45-22.2-4.

5 (69) Wetland, freshwater. As defined in § 2-1-20.

6 (70) Zoning certificate. A document signed by the zoning-enforcement officer, as
7 required in the zoning ordinance, that acknowledges that a use, structure, building, or lot either
8 complies with, or is legally nonconforming to, the provisions of the municipal zoning ordinance
9 or is an authorized variance or modification therefrom.

10 (71) Zoning map. The map, or maps, that are a part of the zoning ordinance and that
11 delineate the boundaries of all mapped zoning districts within the physical boundary of the city or
12 town.

13 (72) Zoning ordinance. An ordinance enacted by the legislative body of the city or town
14 pursuant to this chapter and in the manner providing for the adoption of ordinances in the city or
15 town's legislative or home rule charter, if any, that establish regulations and standards relating to
16 the nature and extent of uses of land and structures; that is consistent with the comprehensive plan
17 of the city or town as defined in chapter 22.2 of this title; that includes a zoning map; and that
18 complies with the provisions of this chapter.

19 (73) Zoning-use district. The basic unit in zoning, either mapped or unmapped, to which
20 a uniform set of regulations applies, or a uniform set of regulations for a specified use. Zoning-
21 use districts include, but are not limited to: agricultural, commercial, industrial, institutional, open
22 space, and residential. Each district may include sub-districts. Districts may be combined.

23 [\(74\) Woodland. As defined in § 2-10.1-3.](#)

24 **45-24-33. Standard provisions.**

25 (a) A zoning ordinance addresses each of the purposes stated in § 45-24-30 and
26 addresses, through reasonable objective standards and criteria, the following general provisions
27 which are numbered for reference purposes only except as prohibited by §§ 45-24-30(b), 45-24-
28 30(c), or 45-24-30(d):

29 (1) Permitting, prohibiting, limiting, and restricting the development of land and
30 structures in zoning districts, and regulating those land and structures according to their type and
31 the nature and extent of their use;

32 (2) Regulating the nature and extent of the use of land for residential, commercial,
33 industrial, institutional, recreational, agricultural, open space, or other use or combination of uses,
34 as the need for land for those purposes is determined by the city or town's comprehensive plan;

- 1 (3) Permitting, prohibiting, limiting, and restricting buildings, structures, land uses, and
2 other development by performance standards, or other requirements, related to air and water and
3 groundwater quality, noise and glare, energy consumption, soil erosion and sedimentation, and/or
4 the availability and capacity of existing and planned public or private services;
- 5 (4) Regulating within each district and designating requirements for:
- 6 (i) The height, number of stories, and size of buildings;
- 7 (ii) The dimensions, size, lot coverage, floor area ratios, and layout of lots or
8 development areas;
- 9 (iii) The density and intensity of use;
- 10 (iv) Access to air and light, views, and solar access;
- 11 (v) Open space, yards, courts, and buffers;
- 12 (vi) Parking areas, road design, and, where appropriate, pedestrian, bicycle, and other
13 circulator systems;
- 14 (vii) Landscaping, fencing, and lighting;
- 15 (viii) Appropriate drainage requirements and methods to manage stormwater runoff;
- 16 (ix) Public access to waterbodies, rivers, and streams; and
- 17 (x) Other requirements in connection with any use of land or structure;
- 18 (5) Permitting, prohibiting, limiting, and restricting development in flood plains or flood
19 hazard areas and designated significant natural areas, [including woodland](#);
- 20 (6) Promoting the conservation of energy and promoting energy-efficient patterns of
21 development;
- 22 (7) Providing for the protection of existing and planned public drinking water supplies,
23 their tributaries and watersheds, and the protection of Narragansett Bay, its tributaries and
24 watershed;
- 25 (8) Providing for adequate, safe, and efficient transportation systems; and avoiding
26 congestion by relating types and levels of development to the capacity of the circulation system,
27 and maintaining a safe level of service of the system;
- 28 (9) Providing for the preservation and enhancement of the recreational resources of the
29 city or town;
- 30 (10) Promoting an economic climate that increases quality job opportunities and the
31 overall economic well-being of the city or town and the state;
- 32 (11) Providing for pedestrian access to and between public and private facilities,
33 including, but not limited to, schools, employment centers, shopping areas, recreation areas, and
34 residences;

- 1 (12) Providing standards for, and requiring the provision of, adequate and properly
2 designed physical improvements, including plantings, and the proper maintenance of property;
- 3 (13) Permitting, prohibiting, limiting, and restricting land use in areas where development
4 is deemed to create a hazard to the public health or safety;
- 5 (14) Permitting, prohibiting, limiting, and restricting extractive industries and earth
6 removal and requiring restoration of land after these activities;
- 7 (15) Regulating sanitary landfill, except as otherwise provided by state statute;
- 8 (16) Permitting, prohibiting, limiting, and restricting signs and billboards and other
9 outdoor advertising devices;
- 10 (17) Designating airport hazard areas under the provisions of chapter 3 of title 1, and
11 enforcement of airport hazard area zoning regulations under the provisions established in that
12 chapter;
- 13 (18) Designating areas of historic, cultural, and/or archaeological value and regulating
14 development in those areas under the provisions of chapter 24.1 of this title;
- 15 (19) Providing standards and requirements for the regulation, review, and approval of any
16 proposed development in connection with those uses of land, buildings, or structures specifically
17 designated as subject to development plan review in a zoning ordinance;
- 18 (20) Designating special protection areas for water supply and limiting or prohibiting
19 development in these areas, except as otherwise provided by state statute;
- 20 (21) Specifying requirements for safe road access to developments from existing streets,
21 including limiting the number, design, and location of curb cuts, and provisions for internal
22 circulation systems for new developments, and provisions for pedestrian and bicycle ways; and
- 23 (22) Reducing unnecessary delay in approving or disapproving development applications
24 through provisions for preapplication conferences and other means.
- 25 (23) Providing for the application of the Rhode Island Fair Housing Practices Act,
26 chapter 37 of title 34, the United States Fair Housing Amendments Act of 1988 (FHAA); the
27 Rhode Island Civil Rights People with Disabilities Act, chapter 37 of title 42; and the Americans
28 with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.
- 29 (24) Regulating drive-through windows of varied intensity of use when associated with
30 land-use activities and providing standards and requirements for the regulation, review, and
31 approval of the drive-through windows, including, but not limited to:
- 32 (i) Identifying within which zoning districts drive-through windows may be permitted,
33 prohibited, or permitted by special-use permit;
- 34 (ii) Specifying requirements for adequate traffic circulation; and

1 (iii) Providing for adequate pedestrian safety and access, including issues concerning
2 safety and access for those with disabilities.

3 (b) A zoning ordinance may include special provisions for any or all of the following:

4 (1) Authorizing development incentives, including, but not limited to, additional
5 permitted uses, increased development and density, or additional design or dimensional flexibility
6 in exchange for:

7 (i) Increased open space;

8 (ii) Increased housing choices;

9 (iii) Traffic and pedestrian improvements;

10 (iv) Public and/or private facilities; and/or

11 (v) Other amenities as desired by the city or town and consistent with its comprehensive
12 plan. The provisions in the ordinance shall include maximum allowable densities of population
13 and/or intensities of use and shall indicate the type of improvements, amenities, and/or
14 conditions. Conditions may be made for donation in lieu of direct provisions for improvements or
15 amenities;

16 (2) Establishing a system for transfer of development rights within or between zoning
17 districts designated in the zoning ordinance; and

18 (3) Regulating the development adjacent to designated scenic highways, scenic
19 waterways, major thoroughfares, public greenspaces, or other areas of special public investment
20 or valuable natural resources.

21 (c) Slope of land shall not be excluded from the calculation of the buildable lot area or
22 the minimum lot size, or in the calculation of the number of buildable lots or units.

23 (d) Nothing in this section shall be construed to restrict a municipality's right, within state
24 and local regulations, to establish its own minimum lot size per zoning district in its town or city.

25 SECTION 6. Section 46-23-6 of the General Laws in Chapter 46-23 entitled "Coastal
26 Resources Management Council" is hereby amended to read as follows:

27 **46-23-6. Powers and duties -- Rights-of-way.**

28 In order to properly manage coastal resources the council has the following powers and
29 duties:

30 (1) Planning and management.

31 (i) The primary responsibility of the council shall be the continuing planning for and
32 management of the resources of the state's coastal region. The council shall be able to make any
33 studies of conditions, activities, or problems of the state's coastal region needed to carry out its
34 responsibilities.

1 (ii) The resources management process shall include the following basic phases:

2 (A) Identify all of the state's coastal resources, water, submerged land, air space, fin fish,
3 shellfish, minerals, physiographic features, and so forth.

4 (B) Evaluate these resources in terms of their quantity, quality, capability for use, and
5 other key characteristics.

6 (C) Determine the current and potential uses of each resource.

7 (D) Determine the current and potential problems of each resource.

8 (E) Formulate plans and programs for the management of each resource, identifying
9 permitted uses, locations, protection measures, and so forth.

10 (F) Carry out these resources management programs through implementing authority and
11 coordination of state, federal, local, and private activities.

12 (G) Formulation of standards where these do not exist, and reevaluation of existing
13 standards.

14 (H) To develop comprehensive programs for dredging in tidal waters and related
15 beneficial use, disposal, monitoring dewatering and transportation of dredge materials.

16 (I) To accept and administer loans and grants from the federal government and from other
17 sources, public or private, for the carrying out of any of its functions, which loans or grants shall
18 not be expended for other than the purposes for which provided.

19 (J) To encourage, participate in, or conduct studies, investigations, research, and
20 demonstrations relating to dredging, disposal of dredge materials and transportation thereof in the
21 tidal waters of the state as the coastal resources management council may deem advisable and
22 necessary for the discharge of its duties under this chapter.

23 (K) To collect and disseminate information relating to dredging, disposal of dredge
24 materials and transportation thereof within the tidal waters of the state.

25 (L) To work with the appropriate federal and state agencies to develop as provided for in
26 this chapter and in chapter 6.1 of this title, a comprehensive plan for dredging in tidal waters and
27 related beneficial use, disposal, monitoring dewatering and transportation of dredge materials.

28 (M) To apply for, accept and expend grants and bequests of funds, for the purpose of
29 carrying out the lawful responsibilities of the coastal resources management council.

30 (iii) An initial series of resources management activities shall be initiated through this
31 basic process, then each phase shall continuously be recycled and used to modify the council's
32 resources management programs and keep them current.

33 (iv) Planning and management programs shall be formulated in terms of the
34 characteristics and needs of each resource or group of related resources. However, all plans and

1 programs shall be developed around basic standards and criteria, including:

2 (A) The need and demand for various activities and their impact upon ecological systems.

3 (B) The degree of compatibility of various activities.

4 (C) The capability of coastal resources to support various activities.

5 (D) Water quality standards set by the director of the department of environmental
6 management.

7 (E) Consideration of plans, studies, surveys, inventories, and so forth prepared by other
8 public and private sources.

9 (F) Consideration of contiguous land uses and transportation facilities.

10 (G) Whenever possible consistency with the state guide plan.

11 (v) The council shall prepare, adopt, administer, and cause to be implemented, including
12 specifically through its powers of coordination as set forth in subdivision (3) of this section, a
13 marine resources development plan and such special area management plans as the council may
14 determine to be appropriate or desirable as follows:

15 (A) Marine resources development plan.

16 (I) The purpose of the marine resources development plan shall be to provide an
17 integrated strategy for: (a) improving the health and functionality of Rhode Island's marine
18 ecosystem; (b) providing for appropriate marine-related economic development; and (c)
19 promoting the use and enjoyment of Rhode Island's marine resources by the people of the state.

20 (II) The marine resources development plan shall include specific goals and objectives
21 necessary to accomplish its purposes, performance measures to determine progress toward
22 achieving such goals and objectives, and an implementation program.

23 (III) The marine resources development plan shall be prepared in cooperation with the
24 department of environmental management, the statewide planning program, and the commerce
25 corporation, with the involvement of such other state agencies as may be appropriate, and with
26 such technical support as may be necessary and appropriate from the Narragansett Bay Estuary
27 Program, the Coastal Institute at the University of Rhode Island, and Rhode Island Sea Grant.

28 (IV) The plan shall be responsive to the requirements and principles of the federal coastal
29 zone management act as amended, including, but not limited to, the expectations of the act for
30 incorporating the federal Clean Water Act into coastal zone management programs.

31 (V) The marine resources development plan shall take into account local land use
32 management responsibilities as provided for under title 45 and harbor management
33 responsibilities, and the preparation of the plan shall include opportunities for involvement and/or
34 comment by cities and towns.

1 (VI) The marine resources development plan shall be adopted by the council in
2 accordance with the provisions of this subsection by July 1, 2005, shall as appropriate incorporate
3 the recommendations of the Governor's Narragansett Bay and Watershed Planning Commission,
4 and shall be made consistent with systems level plans as appropriate, in order to effectuate the
5 purposes of systems level planning. The council shall update the marine resources development
6 plan at least once every five (5) years.

7 (VII) The council shall administer its programs, regulations, and implementation
8 activities in a manner consistent with the marine resources development plan.

9 (VIII) The marine resources development plan and any updates thereto shall be adopted
10 as appropriate as elements of the state guide plan pursuant to § 42-11-10.

11 (B) Special area management plans.

12 (I) The council shall adopt such special area management plans as deemed necessary and
13 desirable to provide for the integration and coordination of the protection of natural resources, the
14 promotion of reasonable coastal-dependent economic growth, and the improved protection of life
15 and property in the specific areas designated council as requiring such integrated planning and
16 coordination.

17 (II) The integrated planning and coordination herein specified shall include, but not be
18 limited to, federal agencies, state agencies, boards, commissions, and corporations, including
19 specifically the commerce corporation, and cities and towns, shall utilize to the extent appropriate
20 and feasible the capacities of entities of higher education, including Rhode Island Sea Grant, and
21 shall provide for the participation of advocacy groups, community-based organizations, and
22 private persons.

23 (III) The council shall administer its programs, regulations, and implementation activities
24 in a manner consistent with special area management plans.

25 (IV) Special area management plans and any updates thereto shall be adopted as
26 appropriate as elements of the state guide plan pursuant to § 42-11-10.

27 (2) Implementation.

28 (i) The council is authorized to formulate policies and plans and to adopt regulations
29 necessary to implement its various management programs. With respect to such policies and
30 plans which relate to matters where the coastal resources management council and the department
31 of environmental management have concurrent jurisdiction and upon formulation of the plans and
32 regulations, the council shall, prior to adoption, submit the proposed plans or regulations to the
33 director of the department of environmental management for the director's review. The director
34 shall review and submit comments to the council within thirty (30) days of submission to the

1 director by the council. The comments of the director shall include findings with regard to the
2 consistency of the policies, plans and/or regulations with the requirements of laws administered
3 by the department. The council shall consider the director's comments prior to adoption of any
4 such policies, plans or regulations and shall respond in writing to findings of the director with
5 regard to the consistency of said policies, plans and/or regulations with the requirements of laws
6 administered by the department.

7 (ii)(A) The council shall have exclusive jurisdiction below mean high water for all
8 development, operations, and dredging, consistent with the requirements of chapter 6.1 of this
9 title and except as necessary for the department of environmental management to exercise its
10 powers and duties and to fulfill its responsibilities pursuant to §§ 42-17.1-2 and 42-17.1-24, and
11 any person, firm, or governmental agency proposing any development or operation within, above,
12 or beneath the tidal water below the mean high water mark, extending out to the extent of the
13 state's jurisdiction in the territorial sea, shall be required to demonstrate that its proposal would
14 not:

15 (I) Conflict with any resources management plan or program;

16 (II) Make any area unsuitable for any uses or activities to which it is allocated by a
17 resources management plan or program adopted by the council; or

18 (III) Significantly damage the environment of the coastal region.

19 (B) The council shall be authorized to approve, modify, set conditions for, or reject any
20 such proposal.

21 (iii) The authority of the council over land areas (those areas above the mean high water
22 mark) shall be limited to two hundred feet (200') from the coastal physiographic feature or to that
23 necessary to carry out effective resources management programs. This shall be limited to the
24 authority to approve, modify, set conditions for, or reject the design, location, construction,
25 alteration, and operation of specified activities or land uses when these are related to a water area
26 under the agency's jurisdiction, regardless of their actual location. The council's authority over
27 these land uses and activities shall be limited to situations in which there is a reasonable
28 probability of conflict with a plan or program for resources management or damage to the coastal
29 environment. These uses and activities are:

30 (A) Power generating over forty (40) megawatts and desalination plants.

31 (B) Chemical or petroleum processing, transfer, or storage.

32 (C) Minerals extraction.

33 (D) Shoreline protection facilities and geographical features, and all directly
34 associated contiguous areas, [including woodland as defined in § 2-10.1-3](#), which are necessary to

1 preserve the integrity of the facility and/or features.

2 (E) Coastal wetlands and all directly associated contiguous areas, [including tree areas and](#)
3 [woodland](#), which are necessary to preserve the integrity of the wetlands including any freshwater
4 wetlands located in the vicinity of the coast. The actual determination of freshwater wetlands
5 located in coastal vicinities and under the jurisdiction of the coastal resources management
6 council shall be designated on such maps that are agreed to in writing and made available for
7 public use by the coastal resources management council and the director, department of
8 environmental management, within three (3) months of [August 6, 1996]. The CRMC shall have
9 exclusive jurisdiction over the wetlands areas described in this section notwithstanding any
10 provision of chapter 1, title 2 or any other provision, except as provided in subsection (iv) of this
11 section. Within six (6) months of [August 6, 1996] the council in cooperation with the director
12 shall develop rules and regulations for the management and protection of freshwater wetlands,
13 affected by an aquaculture project, outside of those freshwater wetlands located in the vicinity of
14 the coast and under the exclusive jurisdiction of the director of the department of environmental
15 management. For the purpose of this chapter, a "coastal wetland" means any salt marsh bordering
16 on the tidal waters of this state, whether or not the tidal waters reach the littoral areas through
17 natural or artificial watercourses, and those uplands directly associated and contiguous thereto
18 which are necessary to preserve the integrity of that marsh. Marshes shall include those areas
19 upon which grow one or more of the following: smooth cordgrass (*spartina alterniflora*), salt
20 meadow grass (*spartina patens*), spike grass (*distichlis spicata*), black rush (*juncus gerardi*),
21 saltworts (*salicornia* spp.), sea lavender (*limonium carolinianum*), saltmarsh bulrushes (*scirpus*
22 spp.), hightide bush (*iva frutescens*), tall reed (*phragmites communis*), tall cordgrass (*spartina*
23 *pectinata*), broadleaf cattail (*typha latifolia*), narrowleaf cattail (*typha angustifolia*), spike rush
24 (*eleocharis rostellata*), chairmaker's rush (*scirpus americana*), creeping bentgrass (*agrostis*
25 *palustris*), sweet grass (*hierochloa odorata*), and wild rye (*etlymus virginicus*).

26 (F) Sewage treatment and disposal and solid waste disposal facilities.

27 (G) Beneficial use, dewatering, and disposal of dredged material of marine origins, where
28 such activities take place within two hundred feet (200') of mean high water or a coastal
29 physiographic feature, or where there is a reasonable probability of conflict with a plan or
30 program for resources management or damage to the coastal environment.

31 (iv) Notwithstanding the provisions of subsections (ii) and (iii) above, the department of
32 environmental management shall maintain jurisdiction over the administration of chapter 1, title
33 2, including permitting of freshwater wetlands alterations and enforcement, with respect to all
34 agricultural activities undertaken by a farmer, as that term is defined in subsection 2-1-22(j),

1 wherever located; provided, however, that with respect to activities located partially or
2 completely within two hundred feet (200') of the coastal physiographic feature, the department
3 shall exercise jurisdiction in consultation with the council.

4 (3) Coordination. The council has the following coordinating powers and duties:

5 (i) Functioning as a binding arbitrator in any matter of dispute involving both the
6 resources of the state's coastal region and the interests of two (2) or more municipalities or state
7 agencies.

8 (ii) Consulting and coordinating actions with local, state, regional, and federal agencies
9 and private interests.

10 (iii) Conducting or sponsoring coastal research.

11 (iv) Advising the governor, the general assembly, and the public on coastal matters.

12 (v) Serving as the lead state agency and initial and primary point of contact for dredging
13 activities in tidal waters and in that capacity, integrating and coordinating the plans and policies
14 of other state agencies as they pertain to dredging in order to develop comprehensive programs
15 for dredging as required by subparagraph (1)(ii)(H) of this section and chapter 6.1 of this title.

16 The Rhode Island resource recovery corporation prior to purchasing cover material for the state
17 landfill shall first contact the CRMC to see if there is a source of suitable dredged material
18 available which shall be used in place of the purchase cover material. Other state agencies
19 engaged in the process of dump closures shall also contact the CRMC to see if there is a source of
20 suitable dredged material available, which shall be used in place of the purchase cover material.
21 In addition, cities and towns may contact the CRMC prior to closing city or town controlled
22 dump sites to see if there is a source of suitable dredge material available, which may be used in
23 place of the purchase cover material.

24 (vi) Acting as the state's representative to all bodies public and private on all coastal and
25 aquaculture related matters.

26 (4) Operations. The council is authorized to exercise the following operating functions,
27 which are essential to management of coastal resources:

28 (i) Issue, modify, or deny permits for any work in, above, or beneath the areas under its
29 jurisdiction, including conduct of any form of aquaculture.

30 (ii) Issue, modify, or deny permits for dredging, filling, or any other physical alteration of
31 coastal wetlands and all directly related contiguous areas which are necessary to preserve the
32 integrity of the wetlands, including, but not limited to, the transportation and disposal of dredge
33 materials in the tidal waters.

34 (iii) Grant licenses, permits, and easements for the use of coastal resources which are held

1 in trust by the state for all its citizens, and impose fees for private use of these resources.

2 (iv) Determining the need for and establishing pierhead, bulkhead, and harbor lines.

3 (v) Enforcing and implementing riparian rights in the tidal waters after judicial decisions.

4 (vi) The council may require an owner or operator of a commercial wharf or pier of a
5 marine commercial facility, as defined in 300.3 of the Rhode Island coastal resources
6 management program, but not including those facilities defined in 300.4 of the Rhode Island
7 coastal resources management program, and which is capable of offloading cargo, and is or will
8 be subject to a new use or a significant intensification of an existing use, to demonstrate that the
9 commercial wharf or pier is fit for that purpose. For the purposes of this subsection, a
10 "commercial wharf or pier" means a pier, bulkhead, wharf, docking facility, or underwater
11 utilities. The council may order said owner or operator to provide an engineering certification to
12 the council's satisfaction that the commercial wharf or pier is fit for the new use or intensification
13 of an existing use. If the council determines that the commercial wharf or pier is not fit, it may
14 order the owner or operator to undertake the necessary work to make the commercial wharf or
15 pier safe, within a reasonable time frame. If the council determines that the commercial wharf or
16 pier, because of its condition, is an immediate threat to public health and safety it may order the
17 commercial wharf or pier closed until the necessary work to make the commercial wharf or pier
18 safe has been performed and approved by the council. All work performed must conform to the
19 council's management program. The council is also given the authority to develop regulations to
20 carry out this provision and to impose administrative penalties of five thousand dollars (\$5,000)
21 per day up to a maximum of twenty thousand dollars (\$20,000) consistent with § 46-23-7.1 where
22 there has been a violation of the orders under this provision.

23 (5) Rights-of-way.

24 (i) The council is responsible for the designation of all public rights-of-way to the tidal
25 water areas of the state, and shall carry on a continuing discovery of appropriate public rights-of-
26 way to the tidal water areas of the state.

27 (ii) The council shall maintain a complete file of all official documents relating to the
28 legal status of all public rights-of-way to the tidal water areas of the state.

29 (iii)(A) The council has the power to designate for acquisition and development, and
30 posting, and all other functions of any other department for tidal rights-of-way and land for tidal
31 rights-of-way, parking facilities, and other council related purposes.

32 (B) Further, the council has the power to develop and prescribe a standard sign to be used
33 by the cities and towns to mark designated rights-of-way.

34 (iv) In conjunction with this subdivision, every state department controlling state-owned

1 land close to or adjacent to discovered rights-of-way is authorized to set out the land, or so much
2 of the land that may be deemed necessary for public parking.

3 (v) No use of land for public parking shall conflict with existing or intended use of the
4 land, and no improvement shall be undertaken by any state agency until detailed plans have been
5 submitted to and approved by the governing body of the local municipality.

6 (vi) In designating rights-of-way, the council shall consider the following matters in
7 making its designation:

8 (A) Land evidence records;

9 (B) The exercise of domain over the parcel such as maintenance, construction, or upkeep;

10 (C) The payment of taxes;

11 (D) The creation of a dedication;

12 (E) Public use;

13 (F) Any other public record or historical evidence such as maps and street indexes;

14 (G) Other evidence as set out in § 42-35-10.

15 (vii) A determination by the council that a parcel is a right-of-way shall be decided by
16 substantial evidence.

17 (viii) The council shall be notified whenever by the judgment of the governing body of a
18 coastal municipality, a public right-of-way to tidal water areas located in such municipality has
19 ceased to be useful to the public, and such governing body proposes an order of abandonment of
20 such public right-of-way. Said notice shall be given not less than sixty (60) days prior to the date
21 of such abandonment.

22 (6) Pre-existing residential boating facilities.

23 (i) The council is hereby authorized and empowered to issue assent for pre-existing
24 residential boating facilities constructed prior to January 1, 1985. These assents may be issued for
25 pre-existing residential boating facilities, even though such facilities do not meet current
26 standards and policies of the council; provided, however, that the council finds that such facilities
27 do not pose any significant risk to the coastal resources of the state of Rhode Island and do not
28 endanger human safety.

29 (ii) In addition to the above criteria, the applicant shall provide clear and convincing
30 evidence that:

31 (A) The facility existed in substantially the same configuration as it now exists prior to
32 January 1, 1985;

33 (B) The facility is presently intact and functional; and

34 (C) The facility presents no significant threat to the coastal resources of the state of

1 Rhode Island or human safety.

2 (iii) The applicant, to be eligible for this provision, shall apply no later than January 31,
3 1999.

4 (iv) The council is directed to develop rules and regulations necessary to implement this
5 subdivision.

6 (v) It is the specific intent of this subsection to require that all pre-existing residential
7 boating facilities constructed on January 1, 1985, or thereafter conform to this chapter and the
8 plans, rules and regulations of the council.

9 (7) Lease of filled lands which were formerly tidal lands to riparian or littoral owners.

10 (i) Any littoral or riparian owner in this state who desires to obtain a lease from the state
11 of Rhode Island of any filled lands adjacent to his or her upland shall apply to the council, which
12 may make the lease. Any littoral or riparian owner who wishes to obtain a lease of filled lands
13 must obtain pre-approval, in the form of an assent, from the council. Any lease granted by the
14 council shall continue the public's interest in the filled lands including, but not limited to, the
15 rights of navigation, fishery, and commerce. The public trust in the lands shall continue and run
16 concurrently with the leasing of the lands by the state to private individuals, corporations, or
17 municipalities. Upon the granting of a lease by the council, those rights consistent with the public
18 trust and secured by the lease shall vest in the lessee. The council may approve a lease of filled
19 lands for an initial term of up to fifty (50) years, with, or without, a single option to renew for an
20 additional term of up to fifty (50) years.

21 (ii) The lessor of the lease, at any time, for cause, may by express act cancel and annul
22 any lease previously made to the riparian owner when it determines that the use of the lands is
23 violating the terms of the lease or is inconsistent with the public trust, and upon cancellation the
24 lands, and rights in the land so leased, shall revert to the state.

25 (8) "Marinas" as defined in the coastal resources management program in effect as of
26 June 1, 1997, are deemed to be one of the uses consistent with the public trust. Subdivision (7) is
27 not applicable to:

28 (i) Any riparian owner on tidal waters in this state (and any successor in interest to the
29 owner) which has an assent issued by the council to use any land under water in front of his or her
30 lands as a marina, which assent was in effect on June 1, 1997;

31 (ii) Any alteration, expansion, or other activity at a marina (and any successor in interest)
32 which has an assent issued by the council, which assent was in effect on June 1, 1997; and

33 (iii) Any renewal of assent to a marina (or successor in interest), which assent was issued
34 by the council and in effect on June 1, 1997.

1 (9) "Recreational boating facilities" including marinas, launching ramps, and recreational
2 mooring areas, as defined by and properly permitted by the council, are deemed to be one of the
3 uses consistent with the public trust. Subdivision (7) is not applicable to:

4 (i) Any riparian owner on tidal waters in this state (and any successor in interest to the
5 owner) which has an assent issued by the council to use any land under water in front of his or her
6 lands as a recreational boating facility; any alteration, expansion or other activity at a recreational
7 boating facility (and any successor in interest) which has an assent issued by the council, which
8 assent was in effect as of June 1, 1997; and

9 (ii) Any renewal of assent to a recreational boating facility (or successor in interest),
10 which assent was issued by the council and in effect on June 1, 1997.

11 SECTION 7. This act shall take effect upon passage.

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LC002046
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO AGRICULTURE AND FORESTRY - WOODLAND PRESERVATION AND
STEWARDSHIP ACT

1 This act would establish and implement a comprehensive program pertaining to
2 woodland stewardship and preservation of significant natural resource areas managed by the
3 department of environmental management (DEM) and administered by cities and towns through
4 local comprehensive planning and zoning.

5 This act would take effect upon passage.

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LC002046
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